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**DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR  
ENCORE AT WENDELL FALLS**

**WAKE COUNTY, NORTH CAROLINA**

**NOTE: AGE RESTRICTIONS ARE APPLICABLE TO LOTS SUBJECT TO THIS DECLARATION**

Submitted electronically by "Bagwell Holt Smith P.A."  
in compliance with North Carolina statutes governing recordable documents  
and the terms of the submitter agreement with the Wake County Register of Deeds.

TABLE OF CONTENTS

ARTICLE I DEFINITIONS.....2

ARTICLE II. PROPERTY SUBMITTED TO THE DECLARATION .....5

Section 2.01. Lots Hereby Subjected to this Declaration .....5

Section 2.02. All Lots Bear the Burdens and Enjoy the Benefits of this Declaration .....5

Section 2.03. Annexation of Additional Property .....5

Section 2.04. Withdrawal of Property. ....5

Section 2.05. Other Acts of Declarant.....5

Section 2.06. Compliance with Master Declaration and Other Documents .....5

Section 2.07. Resolution of Conflicts Between Documents.....6

ARTICLE III. EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY.....6

Section 3.01. Easements over Lots.....6

ARTICLE IV. THE ASSOCIATION.....7

Section 4.01. The Association .....7

Section 4.02. Membership.....7

Section 4.03. Classes of Membership; Voting Rights .....7

Section 4.04. Suspension of Membership Rights .....7

Section 4.05. Meetings of the Membership.....78

Section 4.06. Control by Declarant .....8

Section 4.07. Association Acts Through Its Board of Directors.....8

Section 4.08. Professional Management.....8

ARTICLE V. ASSOCIATION PROPERTY.....8

Section 5.01. Common Areas and Association Property.....8

Section 5.02. Limited Common Areas .....9

Section 5.03. Member’s Rights in Association Property .....9

Section 5.04. Use of the Encore at Wendell Falls Amenities .....9

Section 5.05. Rules and Regulations .....9

Section 5.06. Condemnation.....9

Section 5.07. Damage or Destruction ..... 10

Section 5.08. Conveyance and Encumbrance of Common Area..... 10

Section 5.09. Taxes and Governmental Assessments..... 10

**ARTICLE VI ASSESSMENTS ..... 10**

Section 6.01. Creation of Lien and Personal Obligation ..... 10

Section 6.02. Purposes of Assessments ..... 11

Section 6.03. Determination of Annual Assessment and Shares Thereof ..... 11

Section 6.04. Special Assessments ..... 12

Section 6.05. Special Assessment for Working Capital Reserve..... 12

Section 6.06. Specific Assessments..... 12

Section 6.07. Master Association Assessments ..... 12

Section 6.08. Effect of Non-Payment of Assessments; Remedies of the Association..... 12

Section 6.09. Effect of Foreclosure or Bankruptcy ..... 14

Section 6.10. Revival of Assessment Lien ..... 15

Section 6.11. No Merger ..... 15

Section 6.12. Assessments as Independent Covenant..... 15

Section 6.13. Assessment Collection Policies ..... 15

Section 6.14. Budget Deficits During Development Period..... 15

Section 6.15. Failure to Assess..... 15

**ARTICLE VII. MAINTENANCE.....16**

Section 7.01. Association’s Maintenance Responsibility ..... 16

Section 7.02. Owner’s Maintenance Responsibility ..... 16

Section 7.03. Adjacent or Adjoining Owners..... 17

Section 7.04. Remedy for Owner’s Failure to Maintain..... 17

Section 7.05. Damage or Destruction ..... 18

**ARTICLE VIII. ARCHITECTURAL CONTROL .....18**

**ARTICLE IX. INSURANCE .....18**

Section 9.01. Association Insurance..... 18

Section 9.02. Individual Insurance ..... 19

Section 9.03. Additional Insurance Requirements ..... 19

**ARTICLE X. MORTGAGEE PROVISIONS.....20**

Section 10.01. Notice of Action ..... 20

Section 10.02. Audit..... 20

Section 10.03. No Priority ..... 20

Section 10.04. Failure of Mortgagee to Respond ..... 20

**ARTICLE XI. RESTRICTIONS.....20**

Section 11.01. Leases ..... 20

Section 11.02. Master Declaration; Master Association..... 21

**ARTICLE XII. AMENDMENT .....21**

**ARTICLE XIII. NON-ARBITRAL PROCEEDINGS.....21**

**ARTICLE XIV. ARBITRAL PROCEEDINGS.....21**

Section 14.01. Negotiation ..... 21

Section 14.02. Mediation..... 22

Section 14.03. Final and Binding Arbitration..... 22

Section 14.04. Amendment ..... 23

**ARTICLE XV. DEVELOPMENT ACTIVITIES.....24**

Section 15.01. Development Activities ..... 24

Section 15.02. Marketing ..... 24

Section 15.03. Access..... 24

Section 15.04. Construction ..... 24

Section 15.05. Use of Common Areas ..... 24

Section 15.06. Construction Facilities..... 25

Section 15.07. Parking..... 25

Section 15.08. Construction Regulations ..... 25

Section 15.09. Time Period .....25

Section 15.10. Liability .....25

**ARTICLE XVI. AGE RESTRICTION.....25**

Section 16.01. General .....25

Section 16.02. Requirements for Occupied Dwellings.....25

Section 16.03. Transfer of Title.....26

Section 16.04. Restrictions on Occupancy by Persons under the Age of 30 .....26

Section 16.05. Restrictions on Regular Visitation by Persons under the Age of 30.....26

Section 16.06. Change in Occupancy .....26

Section 16.07. Monitoring Compliance; Appointment of Attorney-in-Fact.....27

Section 16.08. Restriction on Number of Persons Occupying Each Dwelling.....27

Section 16.09. Association Action .....27

**ARTICLE XVII. MISCELLANEOUS.....27**

Section 17.01. No Waivers.....27

Section 17.02. Duration.....28

Section 17.03. Notices.....28

Section 17.04. Successors to Declarant .....28

Section 17.05. Right to Develop.....28

Section 17.06. Liability Arising from Conduct of Owners.....28

Section 17.07. Conflict with the Act, Conflict with Master Declaration; Severability .....29

DECLARATION OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
FOR ENCORE AT WENDELL FALLS  
WAKE COUNTY,  
NORTH CAROLINA

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS is made by Weekley Homes, LLC, a Delaware limited liability company ("Declarant") and consented to by NASH Wendell Falls, LLC, a Delaware limited liability company ("Developer").

WITNESSETH:

WHEREAS, Developer is the owner of all that tract or parcel of land lying and being in Wake County, North Carolina, as shown on the legal description attached hereto as Exhibit "A", incorporated herein (the "Property"); and

WHEREAS, Encore at Wendell Falls comprises a portion of the planned residential development known as Wendell Falls and the Property is subject to a Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded in Book 15834 at Page 1690 of the Wake County Registry (as amended and supplemented from time to time, the "Master Declaration"); and

WHEREAS, this Declaration is an "Additional Association" Declaration and the Association is an "Additional Association" under the Master Declaration; and

WHEREAS, Developer and Declarant intend to impose on the Property mutually beneficial restrictions, including but not limited to age restrictions pursuant to the United States Housing for Older Persons Act of 1995 and the regulations promulgated by the Department of Housing and Urban Development pursuant thereto, under a general plan of improvement for the benefit of the owners of each portion of the Property and to establish a procedure for the overall development, administration, maintenance and preservation of the Property; and

WHEREAS, in furtherance of such plan, it is desirable to create Encore at Wendell Falls Homeowners Association, Inc. to own, operate, maintain and/or manage, as applicable, the Area of Common Responsibility (as defined below) and to administer and enforce the covenants and restrictions and design guidelines imposed hereby; and

WHEREAS, it is intended that every owner of any of the Lots automatically, and by reason of such ownership, shall become a Member of the Association and be subject to its rules and regulations and the assessments and charges made by the Association;

NOW THEREFORE, Developer and Declarant do hereby submit the Property to the provisions of this Declaration. This document establishes a mandatory membership homeowners association pursuant to the provisions of the North Carolina Planned Community Act, N.C. Gen. Stat. §§ 47F-1-101, et seq.

## ARTICLE I     DEFINITIONS.

As used in this Declaration, the following terms shall have the meanings ascribed to them in this Section, such definitions being cumulative of those set forth in the recitals and elsewhere in this Declaration.

"*Act*" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina General Statutes as same may be amended from time to time.

"*Additional Property*" shall mean any and all real property immediately adjacent to the Property or separated from the Property only by streets, open space, or recreational facilities.

"*Amenities*" shall mean those certain recreational improvements and facilities, which may include a pool, club house and other related facilities and improvements, which are now or hereafter located within the Property.

**“Annual Assessment”** shall have the meaning specified in ARTICLE VI entitled “ASSESSMENTS”, and shall constitute the assessments which, pursuant to the provisions of such Article, shall be levied by the Association against the Lots each year for the purpose of raising the funds necessary to pay the “Annual Expenses” (as that term is defined in such Section).

**“Area of Common Responsibility”** shall mean the areas which, by the terms of this Declaration or by contract or agreement with any other Person become the responsibility of the Association. Area of Common Responsibility shall include any Common Areas or Limited Common Areas as provided for herein.

**“Articles of Incorporation”** shall mean the Articles of Incorporation of the Association filed with the North Carolina Secretary of State, as the same may be amended from time to time.

**“Association”** shall mean Encore at Wendell Falls Homeowners Association, Inc., a North Carolina non-profit corporation.

**“Board of Directors”** or the **“Board”** shall mean the body responsible for the administration of the Association, as provided in the Bylaws.

**“Builder”** shall mean any Person who purchases one or more Lots from the Developer for the purpose of constructing improvements for later sale to consumers or who purchases Lots from others for such purpose and is designated as “Builder” by Developer. Any Person occupying or leasing a Lot for residential purposes shall cease to be considered a Builder with respect to such Lot immediately upon occupancy of the Lot for residential purposes, notwithstanding that such Person originally purchased the Lot for the purpose of constructing improvements for later sale to consumers.

**“Bylaws”** shall mean the Bylaws of the Association, as the same may be amended from time to time, attached hereto as Exhibit “C” and incorporated herein by this reference.

**“Common Areas”** shall have the meaning specified in ARTICLE V entitled “ASSOCIATION PROPERTY”.

**“Declarant”** shall mean Weekley Homes, LLC, a Delaware limited liability company, or the Developer upon recording of a Notice of Assumption of Declarant Rights pursuant to Section 17.04, or any successor or assign who shall acquire any portion of the Property for the purpose of development and/or sale and who is designated as Declarant hereunder in a document executed by the immediately preceding Declarant and recorded with the Register of Deeds; provided, however, that there shall be only one “Declarant” hereunder at any one time and Declarant shall not transfer or assign its rights hereunder without the prior written approval of Developer.

**“Declaration”** shall mean this Declaration of Covenants, Restrictions and Easements, as the same may be hereafter amended in accordance with the terms hereof.

**“Development Period”** shall mean the period of time during which Declarant or Developer owns any property that is subject to this Declaration or any property not subject to this Declaration which is either depicted on a recorded subdivision plat with property that is subject to this Declaration or included in Developer's Master Plan as part of a current or future portion of Phase 7 of Wendell Falls. Declarant may, but shall not be obligated to, relinquish its rights under this Declaration and terminate the Development Period by recording a written instrument with the Register of Deeds stating the intent to terminate the Development Period, which instrument is also executed by Developer consenting to such termination.

**“Developer”** shall mean NASH Wendell Falls, LLC, a Delaware limited liability company, or its successors or assigns.

**“DRC”** shall mean the Person entitled to exercise architectural control pursuant to the Master Declaration, being defined as the “Reviewer” therein.

***“Dwelling”*** shall mean and refer to any building on a Lot for which a certificate of occupancy has been issued and which is used or occupied, or intended for use or occupancy, as a residence, whether by the Owner thereof or by tenants or lessees of the Owner.

***“Improved Lot”*** shall mean a Lot (i) upon which there is located a structure for which a certificate of occupancy has been issued by the applicable government authority, and (ii) which has been sold to a Person who is not Declarant or Developer.

***“Limited Common Areas”*** shall have the meaning specified in ARTICLE V entitled “ASSOCIATION PROPERTY”.

***“Lot”*** shall mean each portion of the Property which may be independently owned and conveyed and which is intended for development, use, and occupancy as a detached residence for a single family, as shown on the Plat.

***“Master Association”*** shall mean the Wendell Falls Community Association, Inc., a North Carolina non-profit corporation, its successors and assigns.

***“Master Declaration”*** shall mean the Declaration of Covenants, Conditions, and Restrictions for Wendell Falls recorded in Book 15834 at Page 1690 of the Wake County Registry, as amended and supplemented.

***“Master Documents”*** shall mean the Master Declaration and other “Governing Documents” as defined in the Master Declaration.

***“Member”*** shall mean a Person subject to membership in the Association pursuant to ARTICLE IV entitled “The Association”.

***“Mortgage”*** shall mean a deed of trust or other document by means of which title to any Lot is conveyed or encumbered to secure a debt. The term ***“Mortgagee”*** shall refer to a beneficiary or holder of a Mortgage.

***“Owner”*** shall mean any Person who is a record owner by purchase, transfer, assignment or foreclosure of a fee or undivided fee interest in a Lot; provided, however, that any Person who holds such interest merely as security for the performance of an obligation shall not be an Owner.

***“Person”*** shall mean a natural person, corporation, trust, partnership or any other legal entity.

***“Plat(s)”*** shall mean all plats for any portion of the Property, and any amendments to such Plats, which are hereafter recorded in the Register of Deeds' plat book records, and shall also include any Plats, or amendments thereto recorded with respect to any of the Additional Property subjected to this Declaration pursuant to Section 2.03.

***“Property”*** shall have the meaning ascribed to it hereinabove.

***“Qualifying Resident”*** means a person fifty-five (55) years of age or older who resides in a Dwelling on an Improved Lot.

***“Register of Deeds”*** shall mean the Register of Deeds for the County where the property is located.

***“Supplemental Declaration”*** shall mean an instrument filed with the Register of Deeds which imposes additional restrictions and/or obligations on the land described in such instrument.

***“Unimproved Lot”*** shall mean any Lot that is not an Improved Lot.

## ARTICLE II      **PROPERTY SUBMITTED TO THIS DECLARATION.**

Section 2.01      **Lots Hereby Subjected to this Declaration.** Declarant, for itself and its successors and assigns, and with the consent of Developer, does hereby submit the Property and the Lots to this Declaration. The Property shall hereafter be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration, including, but not limited to, the lien provisions set forth herein. All of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration as applicable to the Lots shall be a permanent charge thereon, and shall run with the Lots.

Section 2.02      **All Lots Bear the Burdens and Enjoy the Benefits of this Declaration.** Every Owner, by taking record title to a Lot, agrees to all of the terms and provisions of this Declaration. Each of the Lots is subject to all burdens, and enjoys all benefits, made applicable hereunder.

Section 2.03      **Annexation of Additional Property.** Developer, or Declarant with the prior written approval of Developer, may, at any time, and from time to time, until ten (10) years after the end of the Development Period, subject all or part of the Additional Property to the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration by executing and recording with the Register of Deeds an amendment to this Declaration describing the property being annexed and adding it to Exhibit "A" of this Declaration, thereby making it part of the "Property," provided that such property is first or simultaneously submitted to the Master Declaration.

From and after such recording, the annexed property shall be part of the Property and shall be held, transferred, sold, conveyed, used, leased, occupied, mortgaged or otherwise encumbered subject to all of the terms, provisions, liens, charges, easements, covenants and restrictions of this Declaration, including, without limitation, all lien and assessment provisions set forth in this Declaration, and all of the terms, provisions, liens, charges, easements, covenants and restrictions set forth in this Declaration shall be a permanent charge on, and shall run with, such annexed property.

In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, with the prior written approval of Developer, Declarant shall further have the right at its election, without the consent of any Owner or Owners, to subject any such annexed property to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens by filing a Supplemental Declaration with the Register of Deeds covering only such annexed property. The Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, and developments contained in such additional declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the annexed property in order to reflect the different character and intended use of such property.

Except as otherwise provided for herein, no approval from any Member of the Association, or from anyone else whomsoever, shall be required for Declarant to subject Additional Property to this Declaration.

Section 2.04      **Withdrawal of Property.** Declarant reserves the right to amend this Declaration during the Development Period, with the prior written approval of Developer, for the purpose of removing any portion of the Property from the coverage of this Declaration, provided such withdrawal is not contrary to the overall, uniform scheme of development for the Property and is not contrary to the planned residential development requirements of the zoning ordinance in effect for the Property. This provision includes Declarant's right to deed over property to any governmental entity as required or deemed necessary in Declarant's discretion. Except as otherwise provided for herein, such amendment shall not require the consent of any Person other than the Owner of the property to be withdrawn, if same is not Declarant.

Section 2.05      **Other Acts of Declarant.** Declarant reserves the right to amend this Declaration during the Development Period, with the prior written approval of Developer, to merge the Association into other homeowners' or community associations and to combine this Declaration with the declaration of such association.

Section 2.06      **Compliance with Master Declaration and Other Documents.** Each Owner, resident, tenant or guest of a Lot shall comply with the provisions of the Master Documents, this Declaration, the Bylaws, any rules and regulations duly adopted by the Association, and decisions and resolutions of the Association and its duly authorized

representatives, all as may be amended from time to time, and failure to comply with any such provisions, decisions or resolutions, shall be grounds for an action to recover sums due for damages or for injunctive relief.

**Section 2.07 Resolution of Conflicts Between Documents.** Each Owner covenants and agrees that the administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, the Bylaws and any rules and regulations duly adopted by the Association. If there are any matters of conflict or inconsistencies in the Bylaws, Articles of Incorporation and this Declaration, then the provisions of this Declaration shall prevail. In the event that anything shown on any Plats for all or any portion of the Property is in any way inconsistent with provisions of this Declaration, then the provisions of this Declaration shall prevail unless otherwise required by law. If a dispute arises among Owners in regard to the administration of the Property, then the provisions of this Declaration shall prevail. Any conflict between this Declaration and the Master Documents shall be resolved pursuant to the terms of Section 17.07 herein. Any additional use restrictions, the provision of additional services by the Association or any additional assessments required hereunder shall not constitute a conflict with the Master Declaration.

### **ARTICLE III EASEMENTS OVER AND AGREEMENTS REGARDING THE PROPERTY.**

**Section 3.01 Easements over Lots.** The Lots shall be subject to, and Declarant and Developer, as to those Lots (if any) owned by each of them at the time of recording of this Declaration or any Supplemental Declaration, do hereby grant, the following non-exclusive easements (in addition to such easements as are established by the Master Declaration or other documents applicable to the Property):

- (a) **Easements Shown on Plats.** Each Lot shall be subject to all easements, borders, buffers and the like which are shown and depicted on the Plats as affecting and burdening such Lot.
- (b) **Entry.** Each Lot shall be subject to a perpetual easement, for the benefit of the Association, for the entry by the authorized agents and representatives of the Association to go upon such Lot under such circumstances and for such purposes as are described elsewhere in this Declaration.
- (c) **Encroachments and Overhangs.** Each Lot shall have a three (3) foot perpetual easement as measured from any point on the common boundary between such Lot and any adjoining Lot, or between such Lot and adjacent Common Areas, for encroachments and overhangs due to the placement or settling of the improvements constructed, reconstructed or altered thereon, for the benefit of the Association and Owner of such encroachment or overhang; unless such encroachment or overhang was due to the willful act of an Owner or the Association.
- (d) **Slope Control.** Each Lot shall be subject to a perpetual easement for the use and enjoyment of Developer, Declarant, the Association, any contractors authorized by Developer, Declarant, the Members, the Owners, and the successors-in-title of each, for slope control purposes, including the right to grade and plant slopes and prevent the doing of any activity that might interfere with slopes or which might create erosion or sliding problems or which might change, obstruct or retard drainage flow.
- (e) **Surface Water Drainage.** Each Lot shall be subject to a perpetual easement in favor of the Association and all other Lots for the drainage of surface waters over, under or across such Lot, including any runoff or carryover of water from one Lot to another, provided that such cross Lot drainage condition was created by Declarant.
- (f) **Maintenance Easement.** The Association shall have a perpetual, non-exclusive easement over the Lots for the purpose of performing its maintenance responsibilities hereunder and under the Declaration, which easement may be exercised by the Association, its officers, directors, employees, agents and contractors, and entry upon any Lot for such purpose shall not be deemed a trespass.
- (g) **Utilities.** Each Lot shall be subject to a perpetual easement in favor of Developer and its designees, Declarant, the Association, and authorized contractors, as well as any public utility company, water main, water services, sewer services or cable company, for the erection, installation, construction and maintenance, repair and replacement of wires, lines, conduits, pipes, and attachments both above and below ground or attached to any building wall in connection with the transmission of electricity, gas,

water, telephone, community antennae or satellite dish, television cables and other utilities. The easement rights to which the Lots shall be subject shall include the right of contractors engaged by the Association to enter upon said Lots from time to time as necessary in order to perform repair and maintenance work.

Notwithstanding any provisions or restrictions contained in this Declaration to the contrary, Developer, Declarant and its respective agents, employees, successors, and assigns, shall be permitted to maintain and carry on any portion of the Property which Developer or Declarant owns, respectively, such facilities and activities as may be reasonably required, convenient, or incidental to the development, construction, completion, improvement of the Property, and sale of the Lot(s), including, without limitation, the installation and operation of development, sales and construction trailers and offices, signs and models upon any Lot(s) owned by the Developer or Declarant.

#### ARTICLE IV THE ASSOCIATION.

Section 4.01 The Association. Prior to the date this Declaration has been recorded with the Register of Deeds, Declarant has caused the Association to be formed, and the Association does now exist, under its Articles of Incorporation and Bylaws.

The Association is and shall be responsible for the maintenance of the Area of Common Responsibility, the enforcement of the covenants and restrictions set forth in this Declaration (subject to the provisions hereof), and the performance of such other duties and services as are required of the Association hereunder or as the Board of Directors shall deem to be in the best interests of the Members of the Association.

Section 4.02 Membership. Every Owner is and shall be a Member of the Association. In no event shall such membership be severed from the ownership of such Lot.

Section 4.03 Classes of Membership; Voting Rights. The Association shall have two classes of voting membership: Class A and Class B.

- (a) Class A. The Class A Members shall be all those Persons holding an interest required for membership in the Association, as specified in this Section 4.03 including the Declarant for any Lots owned by the Declarant.

Class A Members shall be entitled to vote only on matters to which this Declaration, the Articles, the By-Laws, or North Carolina law specifically provide that a vote of the Owners or the Association's membership is required. When entitled to vote, Class A Members shall be entitled to cast one (1) vote for each Lot in which they hold an interest required for membership.

- (b) Class B. Declarant shall be the only Class B Member. During the existence of the Class B Membership, the approval of the Class B Member shall be required for any action requiring a vote of the membership under the Declaration, Bylaws, Articles, or North Carolina law, in addition to the requisite votes of the Class A Members. The Class B membership shall automatically terminate and cease to exist upon termination of the Development Period.

The Class "B" membership shall be temporarily suspended during any period that the Declarant does not own a Lot, subject to automatic reinstatement upon Declarant's acquisition of any Lot or annexation of additional property pursuant to Section 2.03; however, notwithstanding any such temporary suspension, the Declarant shall continue to have the right to appoint, remove and replace the members of the Board of Directors during the Development Period, as provided in the Bylaws.

Section 4.04 Suspension of Membership Rights. The membership rights of any Member of the Association, including the right to vote, may be suspended by the Board of Directors pursuant to the authority granted in the Bylaws. Any such suspension shall not affect such Member's obligation to pay assessments coming due during the period of such suspension and shall not affect the permanent charge and lien on the Member's Lot in favor of the Association.

Section 4.05 Meetings of the Membership. All matters concerning the meetings of Members of the Association, including the time at which and the manner in which notice of any said meeting shall be given to Members, the quorum

required for the transaction of business at any meeting, and the vote required on any matter, shall be as specified in this Declaration, or in the Articles of Incorporation or the Bylaws, or by law. Notwithstanding anything to the contrary, during the Development Period, there shall be no obligation for all meetings of the Board to be open to Members of the Association. Additionally, in the event that a meeting of the Board is open to the Members, there shall be no obligation for the Board to announce the nature of the business to be discussed in executive session. Following the Development Period, the Board may determine whether all meetings of the Board shall be open to the Members of the Association.

**Section 4.06     Control by Declarant.** Except as otherwise provided for herein, Declarant hereby retains the right to appoint and remove any person, whether or not an Owner, on the Board of Directors of the Association and any officer or officers of the Association during the Development Period. Upon the expiration of the period of Declarant's right to appoint and remove directors and officers of the Association pursuant to the provisions of this Section, such right shall automatically pass to the Class A Members, including Developer or Declarant if either then owns one or more Lots; and a special meeting of the Association shall be called for and held within ninety (90) days from the date of the expiration of Declarant's rights hereunder. At such special meeting the Class A Members shall elect a new Board of Directors which shall undertake the responsibilities of running the Association and Declarant shall deliver the books, accounts, and records, if any, which they have kept on behalf of the Association as well as any agreements or contracts executed by or on behalf of the Association which may still be in effect or operation, which contracts and agreements, to the extent they are not bona fide or are unconscionable, may be terminated by the new Board of Directors upon not less than ninety (90) days' notice to the other party in accordance with Section 47F-3-105 of the Act. Each Owner by acceptance of a deed to or other conveyance of a Lot vests in Declarant such authority to appoint and remove directors and officers of the Association as provided in this Section.

Notwithstanding anything contained herein to the contrary, during the Development Period, Developer shall have the right to appoint, remove and replace one (1) member of the Board of Directors, in its sole discretion.

**Section 4.07     Association Acts Through Its Board of Directors.** Whenever approval of, or action or inaction by, the Association is referred to or called for in this Declaration, such action, inaction or approval shall be by the Board of Directors of the Association, unless it is specifically stated in this Declaration, the Articles of Incorporation or the Bylaws with respect to such action, inaction or approval that the Members of the Association, or the Owners of Lots, must vote or approve the same. No member of the Board of Directors of the Association or any officer of the Association (including, without limitation, any such individual who shall have been appointed by Declarant or Developer) shall be personally liable to any owner of any Lot for any mistake of judgment or for any other act or omission of any nature whatsoever, and shall be liable to the Association only for any acts or omissions found by a court of competent jurisdiction to constitute gross negligence, compensation for services beyond reimbursement for expenses, acting in bad faith, obtaining an improper personal benefit in transaction involving the Association, liability from the operation of a motor vehicle, unlawful loans or distributions from the Association, or fraud against the Association.

**Section 4.08     Professional Management.** The Association may, and upon termination of the Development Period shall, retain professional management to assist the Board in managing the affairs of the Association, or any part thereof, on such terms as the Board of Directors deems to be in the best interests of the Association.

## ARTICLE V     ASSOCIATION PROPERTY

**Section 5.01     Common Areas and Association Property.** The Developer or the Declarant, with the prior written consent of Developer, shall have the right to transfer and convey to the Association any portion of the Property. All portions of the Property which the Developer or Declarant transfers to the Association shall thereafter constitute Common Areas. Said right may be exercised by the Declarant any time, and from time to time, until five (5) years after the end of the Development Period.

The Association will govern use of the Common Areas and may promulgate rules and regulations related to such use. The Declarant or the Association may authorize persons who are not Owners to use the Common Areas or portions of the Common Areas.

The Common Areas shall be conveyed to the Association free of debt encumbrance, and subject to easements and encumbrances recorded with the Register of Deeds, irrespective of whether the deed of conveyance shall make a specific reference to such rights and easements. COMMON AREAS SHALL BE CONVEYED TO THE ASSOCIATION WITHOUT WARRANTY - "AS IS" AND "WHERE IS".

Section 5.02 Limited Common Areas. Certain portions of the Common Area may be designated as "Limited Common Area" and reserved for the exclusive use or primary benefit of less than all of the Owners. By way of illustration and not limitation, Limited Common Areas may include Amenities, landscaped areas, and other portions of the Common Area. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be an Association expense allocated, in any reasonable manner established by the Association, among the Owners of Lots for the benefit of which such Limited Common Areas are reserved.

Limited Common Areas may be designated as such in the deed conveying such area to the Association or on the Plat relating to such Common Area; provided, however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Lots, so long as Declarant has a right to subject additional property to this Declaration pursuant to ARTICLE II.

After recording the initial deed conveying such area to the Association or the Plat relating to such Common Area, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Declarant and Developer during the Development Period and thereafter by the Board of Directors with the approval of voting Members representing a majority of the total votes in the Association. As long as Declarant owns any property subject to this Declaration or which may become subject to this Declaration in accordance with ARTICLE II, any such assignment or reassignment shall also require Declarant's written consent.

Section 5.03 Member's Rights in Association Property. Every Owner of any Lot shall have a non-exclusive right and easement of enjoyment and use in and to the Common Areas and such right and easement shall be appurtenant to, and shall pass with, the title to the Lot(s) owned by such Owner. Such right and easement of enjoyment and use are and shall be subject to the limitations and easements which are described in this Declaration and to the right of the Association to promulgate reasonable rules and regulations regarding the use of Common Areas, and the right of the Association to suspend the enjoyment rights of the Owner and occupants of any Lot during any period in which any assessment which is due to the Association from such Owner remains unpaid, and such period as the Board of Directors may consider appropriate for any infraction of the terms of this Declaration or the Associations' published rules and regulations, subject to the limitations of the Act. In addition, the Board of Directors may permit other persons who are not residents of any Lots to use the Common Areas upon such terms and conditions, and for the payment of such fees, as shall be determined by the Board of Directors.

Section 5.04 Use of the Encore at Wendell Falls Amenities. The Amenities are owned by the Association for the benefit of the Owners (or the Owners of such Lots as to which Limited Common Areas are assigned pursuant to Section 5.02) and their family members, guests, invitees and lessees (the "Amenity Users"). The Amenities may be used by the Amenity Users solely for recreational and social purposes and activities. Use of the Amenities shall be subject to the terms of this Declaration, and the rules, regulation, policies and procedures of the Association with respect to use of the Amenities as may be published from time to time.

Each Owner, by acceptance of title to a Lot shall be deemed to have acknowledged and agreed that Declarant has not made any representations or warranties regarding the right of the Amenity Users to use the Amenities, except as is specifically set forth in this Declaration.

ANY INDIVIDUAL USING THE AMENITIES SHALL DO SO AT HIS OWN RISK AND HEREBY HOLDS DEVELOPER, DECLARANT AND THE ASSOCIATION HARMLESS FROM AND AGAINST ANY CLAIM OR LOSS ARISING FROM SUCH USE.

Section 5.05 Rules and Regulations. The Association shall be entitled to adopt and enforce reasonable rules and regulations related to the use and operation of the Property. All users of the Property, specifically including but not limited to the Amenities, shall be subject to such rules and regulations, provided any such rules and regulations are not applied or enforced in a discriminatory manner. Enforcement of such rules and regulations can include the right to prohibit use, deny access to facilities, and suspend voting rights of persons including but not limited to Amenity Users, for violations. The rules and regulations so promulgated shall, in all respects, be consistent with the provisions

of this Declaration, the Articles of Incorporation, Bylaws, and the Master Documents.

**Section 5.06     Condemnation.** If any part of the Common Areas are either: (a) taken by any authority having the power of condemnation or eminent domain, or (b) conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of at least eighty percent (80%) of the Class A votes (and, if during the Development Period, the written consent of Declarant), then the Association shall restore or replace the improvements on the remaining land included in the Common Areas to the extent available unless, within sixty (60) days after such taking, at least sixty-seven percent (67%) of the Class A votes (and Declarant and Developer, if during the Development Period) otherwise agree. If the taking or conveyance does not involve any improvements on the Common Areas, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds may be used by the Association for such purposes as the Board shall determine.

**Section 5.07     Damage or Destruction.** If any improvements located on any Common Areas are damaged or destroyed on account of the occurrence of any casualty, the Board of Directors shall proceed with the filing and settlement of all claims arising under any policy of insurance maintained by the Association with respect to such improvements and shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed improvements.

Any such damage or destruction shall be repaired or reconstructed unless it shall be decided, within ninety (90) days after the occurrence of casualty, by at least 67% of the Class A votes (and by Declarant and Developer, if during the Development Period), not to repair or reconstruct such damage. If that it shall be decided not to repair or reconstruct some damage or destruction, the proceeds of any insurance as may become payable to the Association as a result of such damage or destruction shall be retained by and for the benefit of the Association and placed in a capital improvements account. This is a covenant for the benefit of Mortgagees and may be enforced by the Mortgagee of any affected Lot. If the insurance proceeds are insufficient to cover the costs of repair or reconstruction, the Board of Directors may, without a vote of the Class A Members, levy special assessments to cover the shortfall.

**Section 5.08     Conveyance and Encumbrance of Common Area.** Any conveyance or mortgaging of the Common Areas will require the consent of at least eighty percent (80%) of the Class A votes and, if during the Development Period, the consent of Declarant and Developer. Notwithstanding anything to the contrary in this Section, however, the Association, acting through the Board of Directors, may grant easements over the Common Areas for installation and maintenance of utilities and drainage facilities, roads and pathways, and for other purposes not inconsistent with the intended use of the Common Areas, without the approval of the Membership.

**Section 5.09     Taxes and Governmental Assessments.** The Association shall pay when due, and in any case before the accrual of penalties thereon, all taxes, assessments, license fees, permit fees and other charges imposed by any governmental authority in connection with the Association's ownership or operation of the Common Area. Provided, however, that the Association may institute an appropriate legal proceeding for the purpose of contesting or objecting to the amount or the validity of any such tax, assessment, fee, or charge by appropriate legal proceedings. If the Association fails to pay any governmental charge when due and does not contest any governmental charge in a timely and appropriate legal proceeding, then each Owner shall become personally obligated to pay to the governmental authority imposing such charge a portion of the charge in an amount determined by multiplying the total charge by a fraction, the denominator of which is the total Lots and the numerator of which is the Lots owned by the Owner for whom the calculation is being performed (the "Owner's Share"). If the Owner does not pay the Owner's Share within thirty (30) days following actual notice to the Owner of the Owner's Share, then the Owner's Share shall become a continuing lien on the property owned by the Owner, and the governmental entity may bring an action at law against the Owner to obtain payment of the Owner's Share or may foreclose the lien against the property of the Owner.

## ARTICLE VI     ASSESSMENTS

**Section 6.01     Creation of Lien and Personal Obligation.** Each Owner, by acceptance of a deed conveying title to any Lot, covenants and agrees to pay to the Association all assessments and charges which are levied by the Association against the Lot(s) owned by such person in accordance with the terms and provisions of this Declaration.

All sums lawfully assessed by the Association against any Lot and the Owner thereof, together with interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution

not to exceed 18% per annum) thereon, late charges, and the costs of collection thereof, shall, from the time the sums become due and payable, be the personal obligation of the Owner of such Lot and constitute a continuing lien in favor of the Association on such Lot prior and superior to all other liens whatsoever except: (1) Liens for ad valorem taxes on the Lot; (2) The lien of any first priority mortgage covering the Lot and the lien of any mortgage recorded prior to the recording of this Declaration; (3) The lien of any secondary purchase money Mortgage covering the Lot, provided that neither the grantee nor any successor grantee of such Mortgage is the seller of the Lot; (4) Liens filed by the Master Association for Master Association Assessments; and (5) any other liens which by law would be superior to the lien of the Association, including federal and state tax liens. The covenant to pay assessments herein stated is and shall be a covenant running with land.

**Section 6.02**     Purposes of Assessments. The assessments levied by the Association pursuant to this Section shall be used to pay the costs and expenses which the Association shall incur in connection with the performance of its duties and responsibilities pursuant to the Act, the Master Declaration, this Declaration, the Articles of Incorporation and the Bylaws (such costs and expenses being herein referred to as the "Annual Expenses"). Without limiting the generality of the foregoing, the Annual Expenses shall include the costs of: payment of all costs and expenses incurred by the Association in connection with the maintenance of the Area of Common Responsibility and the Association's other operations; payment of the premiums for all insurance, fidelity and other bonds which shall be obtained by the Association; the payment of the fees of such management firms as the Board of Directors shall employ; payment of fees for the provision of such professional services as the Board of Directors shall determine to be required by the Association, including but not limited to legal, accounting and architectural services; and such other purposes as the Board of Directors shall deem necessary or desirable to promote the health, safety and welfare of the Association and its Members.

**Section 6.03**     Determination of Annual Assessment and Shares Thereof. Prior to the commencement of each fiscal year of the Association (said fiscal year being specified in the Bylaws) or at any time it deems best, the Board of Directors shall estimate the total amount of the Annual Expenses which are anticipated to be incurred by the Association during such fiscal year and shall determine the amount which will be deposited during such fiscal year into reserve funds maintained by the Association. The Board of Directors shall thereupon adopt a budget for the Association's expenditures and reserves based upon such estimate and providing for the total annual assessment to be levied against the Members of the Association for such fiscal year (the total assessment which shall be so determined and levied for any fiscal year is herein referred to as the "Total Annual Assessment").

The Owner of each Improved Lot shall pay a portion of the Total Annual Assessment that will be calculated by multiplying the Total Annual Assessment by a fraction, the denominator of which will be the total number of Lots and the numerator will be the number of Lots which that Owner owns. For so long as there are Unimproved Lots, the owner of each Unimproved Lot shall pay a portion of the Total Annual Assessment equal to ten percent (10%) of the Annual Assessment levied on each Improved Lot. The result may be adjusted by the Board by up to One Hundred and 00/100 Dollars (\$100.00) for the purpose of creating whole dollar amounts for payments, equal periodic payments and avoiding losses due to rounding. During the Development Period, Declarant shall fund the portion of the Annual Assessment not allocated to either the Improved Lots or Unimproved Lots.

Within 30 days following the Board's adoption of any new or revised budget under this Section, the Board of Directors shall send a summary of the budget, together with a written notice of the amount of the Annual Assessment so determined for such fiscal year and the amount of such Annual Assessment which shall be levied against each Lot, to the Owner of every Lot. The budget shall be accompanied by notice of the date, time and location of a meeting to consider ratification, which meeting shall be set by the Board to occur no less than 10 nor more than 60 days after mailing of the budget summary and notice. The notice shall include a statement that the meeting may be held and the budget may be ratified without a quorum being present. The budget shall be deemed ratified unless rejected at the meeting by Owners of at least 75% of the total number of Lots then subject to assessment hereunder. If any proposed budget is rejected or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Annual Assessment from time to time during the year, subject to the notice and ratification requirements set forth above..

The amount of the Annual Assessment as determined hereunder shall be due and payable to the Association in a single installment or in such multiple installments as the Board of Directors shall determine and shall be paid to the Association when due without further notice.

**Section 6.04 Special Assessments.** If for any reason, including non-payment of any assessments to the Association by the persons liable therefore, the budget adopted by the Board of Directors for any fiscal year shall prove to be inadequate to defray the Annual Expenses for such fiscal year, or if the Board of Directors shall determine that it is in the best interests of the Association to levy a special assessment to pay the costs of any capital improvements or capital repairs, the Board of Directors shall have the authority to levy a special assessment against the Lots and the Owners thereof to raise such needed funds. Any special assessment levied by the Board of Directors pursuant to the provisions of this Section shall be payable at such times and such installments as the Board of Directors shall determine. Each Improved Lot shall be liable for the payment of an equal share of every special assessment which shall be levied by the Association pursuant to the provisions of this Section.

**Section 6.05 Special Assessment for Working Capital Reserve.** At the time of closing of the initial sale of each Improved Lot, a sum equal to or no greater than Three Thousand Two Hundred Fifty and No/100<sup>th</sup> Dollars (\$3,250.00) shall be collected from the purchaser of such Lot and transferred to the Association as part of its working capital. The purpose of the working capital fund is to ensure that the Association will have adequate cash available to meet its initial operating expenses or to acquire additional equipment or services deemed by the Board of Directors to be necessary or desirable. Amounts paid to the Association pursuant to this Section shall not be considered as an advance payment of any regular assessment.

**Section 6.06 Specific Assessments.** The Board may levy specific assessments against individual Owners (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of anything maintained by the Association, which is occasioned by the act(s) of individual Owner(s), their family, pets or their invitees, and not the result of ordinary wear and tear, (ii) subject to the notice and hearing procedures in the Act, for the payment of fines, penalties or other charges imposed against an individual Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws, or any rules or regulations promulgated hereunder, or (iii) for any common expenses, other than expenses for the maintenance of the Common Areas, which benefit less than all of the Lots or which significantly disproportionately benefit all Lots (which expenses may be specially assessed equitably among all of the Lots which are benefited according to the benefit received); provided that in no event shall Declarant or Developer be obligated to pay any specific assessment. Failure of the Board to exercise its authority under this Section shall not be grounds for any action against the Association or the Board of Directors and shall not constitute a waiver of the Board's right to exercise its authority under this Section in the future with respect to any expenses.

Upon the establishment of a specific assessment under this Section, the Board shall send written notice of the amount and due date of such specific assessment to the affected Owner(s) at least thirty (30) days prior to the date such specific assessment is due.

**Section 6.07 Master Association Assessments.** The Lots shall be subject to all assessments levied by the Master Association pursuant to the provisions of the Master Declaration.

**Section 6.08 Effect of Non-Payment of Assessments; Remedies of the Association.**

- (a) **Delinquency Date.** Any assessments, regular, special or specific, which are not paid by the due date are delinquent as of midnight of the due date.
- (b) **Automatic Remedies.** Except to the extent otherwise expressly required by law or unless otherwise agreed in writing by the Board of Directors, if any assessments are not paid by the due date, then:
  - (i) Late charges (no greater than \$100.00 per violation per day in which the same violation remains uncured), interest (computed from its due date at a rate of 10% per annum or such higher rate as the Board may establish by resolution not to exceed 18% per annum) from the due date, and all compliance costs (including reasonable attorney's fees), will be added to and included in the amount of such assessment except as otherwise expressly provided

in the Association's current Assessment Collection Policy as provided in Section 6.13 hereof;

- (ii) The Association may notify any credit bureau and/or any mortgagee or other lienholder with respect to the applicable Lot as to any default, including delinquency in payment of assessments and any other monetary amounts due to the Association; and/or
  - (iii) The Association may exercise any other rights and remedies and institute and prosecute such other proceedings as it deems necessary to collect all amounts due.
- (c) Elective Remedies After Notice. If any assessments are not paid within thirty (30) days after the due date, then the Association may elect to exercise any or all of the following remedies, in addition to and not in lieu of the automatic remedies as above provided, and without prejudice to any other rights or remedies, provided that notice and opportunity to be heard is first given:
- (i) Acceleration of Assessments. The Association may accelerate, through the end of the year in which notice of default and acceleration is given and for an additional six (6) month period thereafter, all regular assessments and all special assessments (including any installment payments) due or to become due during the acceleration period; provided, the maximum period of acceleration may not exceed twelve months after the first day of the month following the month in which notice of default and acceleration is given. All such accelerated assessments are deemed to be special assessments as to the applicable Lot and Owner thereof.
  - (ii) Suspension of Services. To the fullest extent allowed by law, the Association may suspend until all assessments (including all special assessments) are paid in full, all rights of the delinquent Owner, the Owner's tenants, and the related parties of either, to (i) receive any and all services provided by the Association to the applicable Lot and any improvements thereon, and/or (ii) use, employ or receive the benefits of any Common Areas, including all rights to use of any and all recreational facilities, if any. Notwithstanding the foregoing, no Owner, Owner's tenant, or any of their related parties may be denied any rights of ingress, egress or regress to or from the Property.
- (d) Action for Debt; Foreclosure, Including Expedited Foreclosure.
- (i) Each Owner, by acquisition of any Lot within the Property or any right, title or interest therein, expressly grants to and vests in the Association: (x) the right and power to bring all actions against each Owner, personally for the collection of all delinquent assessments as a debt; (y) the right and power to foreclose the Association's continuing lien for assessments by all methods available for the enforcement of a mortgage, deed of trust or any other contractual lien, including foreclosure by an action brought in the name of the Association either judicially or non-judicially by power of sale; and (z) a continuing power of sale in connection with the non-judicial foreclosure of the Association's continuing lien for assessments as herein provided.

The Board of Directors or the then President of the Association may appoint, in writing, at any time and from time to time, an officer, agent, trustee, or attorney of the Association (the "Trustee") to exercise the power of sale on behalf of and as the agent of the Association, including without limitation to deliver and file the notices required by the Chapter 47F of the North Carolina General Statutes (the "Code"), and to conduct the sale and to otherwise comply with said statute. The Board of Directors or the then President of the Association may, at any time and from time to time, remove any such Trustee and appoint a successor or substitute Trustee without further formality than an appointment and designation in writing. Except as otherwise provided by this Declaration, the Association will exercise its power of sale pursuant to the Code. The Association has the right and

power to bid on any Lot at any foreclosure sale, either judicial or non-judicial, and to acquire, hold, lease, mortgage, or convey the same.

If directed by the Association to foreclose the Association's continuing lien, Trustee will, either personally or by agent, give notice of the foreclosure sale as required by the Code as then in effect, and sell and convey all or part of the applicable property "AS IS", "WHERE IS", and "WITH ALL FAULTS" to the highest bidder, subject to prior liens, encumbrances and any other matters of record and without representation or warranty, express or implied, by Trustee or the Association. The Association must indemnify Trustee and hold Trustee harmless from and against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the Association's lien or otherwise pursuant to this Declaration, including indemnification for all court and other costs, and attorney's fees incurred by Trustee in defense of any action or proceeding taken against Trustee regarding any of the foregoing.

The filing of suit to collect any sums due hereunder or to foreclose the Association's continuing lien for assessments may never be considered an election so as to preclude exercise of any other rights or remedies, including without limitation foreclosure under power of sale before or after a final judgment. After foreclosure, either judicial or non-judicial, the former Owner and anyone claiming under the former Owner must immediately surrender possession to the purchaser. If not, the former Owner and anyone claiming under the former Owner will be mere tenants at sufferance of the purchaser, and the purchaser may obtain immediate possession pursuant to any actions or remedies permitted by law, including an action for forcible detainer or eviction to be maintainable by the purchaser.

Each owner, by acquisition of any Lot, specifically covenants and stipulates as to each and every Trustee's foreclosure sale that the recitals in any appointment or designation of Trustee, any conveyance by the Trustee and any affidavit of the Trustee or the Association related thereto is full proof and evidence of the matters therein stated, that all prerequisites of the foreclosure sale are presumed to have been performed, and that the foreclosure sale made under the powers herein granted is a perpetual bar against the Owner(s) of the Lot(s) sold and their heirs, executors and administrators, successors and assigns, and any Persons whatsoever claiming or to claim thereunder.

Without limitation of any other provisions of this Declaration, Declarant, during the Development Period, or the Board of Directors thereafter, are hereby specifically authorized to amend this Section 6.08 in any manner deemed necessary or appropriate as regarding or to conform to applicable provisions or requirements of the North Carolina General Statutes and/or applicable rules pertaining thereto without the joinder or consent of any Owner or any other Person.

- (e) Extinguishment of Inferior Liens. Foreclosure of the Association's continuing lien for assessments terminates, extinguishes and forever discharges all inferior or subordinate liens and encumbrances (being all liens and encumbrances except as provided by Section 6.10~~Section 6.01~~) as to the affected Lot. The foregoing applies to judicial and non-judicial foreclosure of the Association's continuing lien for assessments regardless of whether or not the holder of the inferior or subordinate lien or encumbrance is made a party to or given notice of any proceedings in connection therewith, including without limitation to the fullest extent permitted by law whether or not made a party to or given notice of any judicial foreclosure suit and any other proceedings in connection therewith.

**Section 6.09** Effect of Foreclosure or Bankruptcy. The effect of judicial or non-judicial foreclosure of a lien which is superior to the Association's continuing assessment lien under this Declaration, or acceptance of a deed in lieu thereof, and the effect of the discharge of an Owner in bankruptcy is determined as of the date of foreclosure, the date of signing of a deed in lieu which is accepted by the grantee or the date of filing of the bankruptcy in which the Owner is discharged, as the case may be (the "Discharge Date"). Foreclosure or acceptance of a deed in lieu as aforesaid does not relieve the former Owner from the personal obligation for payment of assessments due as of the Discharge Date, but does release the Association's continuing assessment lien as to and only as to assessments due

prior to the Discharge Date. The purchaser at foreclosure or grantee under a deed in lieu and an Owner discharged in bankruptcy is also relieved from any obligation for payment of assessments due prior to the Discharge Date, but is obligated to pay all assessments assessed or assessable from and after the Discharge Date and the Association's continuing assessment lien fully secures payment of said assessments. For purposes of the foregoing "assessments assessed or assessable" means (i) prorated regular annual assessments based on the number of months remaining in the calendar year in which the Discharge Date occurs regardless of whether the applicable regular annual assessment is payable in advance annually, semi-annually or quarterly, and (ii) any installments for special assessments so payable which become due after the Discharge Date.

**Section 6.10 Revival of Assessment Lien.** The Association's assessment lien is automatically revived as to any Owner who reacquires ownership of the applicable Lot within two (2) years after the Discharge Date (as defined in the immediately preceding Section) to the same effect as if none of the events causing the Discharge Date to occur had occurred if ownership is reacquired from the purchaser at foreclosure, the grantee under the deed in lieu of foreclosure, or any successor in title to such purchaser or grantee and the reacquisition of ownership constitutes a fraudulent transfer under Chapter 39 of the Code or under any other state or federal statutes or laws.

**Section 6.11 No Merger.** The Association's assessment lien is not, by merger or otherwise, extinguished or otherwise effected by acquisition of ownership of a Lot at any time and in any manner by the Association except as otherwise expressly agreed in writing by the Association.

**Section 6.12 Assessments as Independent Covenant.** The obligation to pay assessments is a separate and independent covenant and contractual obligation on the part of each Owner. No off-set, credit, waiver, diminution, or abatement may be claimed by any Owner to avoid or diminish the obligation for payment of assessments for any reason, including, by way of illustration but not limitation, (i) by nonuse of any Area of Common Responsibility or abandonment of a Lot, (ii) by reason of any alleged actions or failure to act by Declarant, the Association, the Board, the Master Association, the DRC, or any of their related parties, whether or not required under this Declaration, (iii) for inconvenience or discomfort arising from the making of repairs or improvements which may be or are the responsibility of Declarant, the Association, the Board, the Master Association, the DRC, or any of their related parties, or (iv) by reason of any action taken by the Developer, Declarant, the Association, the Board of Directors, the Master Association, the DRC, or any of their related parties, to comply with any law, ordinance, or any order or directive of any governmental authority, or pursuant to any judgment or order of a court of competent jurisdiction.

**Section 6.13 Assessment Collection Policies.** The Association will adopt assessment collection policies consistent with this Declaration and in accordance with the Code. The initial Association Assessment Collection Policy will be adopted by Declarant. Declarant, with the prior written consent of Developer during the Development Period, and the Board, at any time, may from time to time adopt and amend such other assessment collection policies as either may deem to be necessary or appropriate, including with regard to or concerning the Association Assessment Collection Policy as initially adopted by Declarant.

**Section 6.14 Budget Deficits During Development Period.** Declarant may advance funds to the Association sufficient to satisfy the deficit, if any, in any fiscal year between the actual operating expenses of the Association (exclusive of any allocation for capital reserves) and the annual and special assessments for such fiscal year. Such advances shall be evidenced by promissory notes from the Association in favor of Declarant and shall be paid back to Declarant if and to the extent that sufficient funds are generated by assessments in future years until such time as Declarant no longer has the authority to appoint the directors and officers of the Association. Declarant may, but is not obligated to, forgive any promissory notes from the Association made pursuant to this Section 6.14.

**Section 6.15 Failure to Assess.** The failure of the Board to fix the assessment amounts or to deliver to each Owner the assessment notice shall not be deemed a waiver, modification or release of any Owner of the obligation to pay assessments. In such event, each Owner shall continue to pay assessments on the same basis as for the last year for which an assessment was made until a new assessment is made, at which time any shortfalls in collections may be assessed retroactively by the Association.

## ARTICLE VII     MAINTENANCE

### Section 7.01     Association's Maintenance Responsibility.

(a) Lot Maintenance. The Association shall be responsible for maintaining the grass, plants, shrubs, trees, and landscaping as described in Exhibit "B", attached hereto and incorporated by reference (hereinafter the "Yard Improvements"). The Association also may maintain any Yard Improvements that are installed by an Owner with prior written approval and consent of the Association (but only to the extent that such consent specifically provides that the Association will maintain such added landscaping), provided, however, that: (i) if an Owner installs a fence on their Lot, the Association, in the sole discretion of the Board, shall determine whether to maintain any Yard Improvements inside of such fence, (ii) the Association's obligation to maintain shall not include the obligation to replace any plant, shrub or tree for any reason; and (iii) the Association shall not be responsible for repair or replacement of any Yard Improvements when such repair or replacement is necessitated by work done by or at the request of any Owner or any utility company or governmental authority. If a common irrigation system that provides irrigation for the Lots is installed by Declarant or Developer, the Association shall maintain, repair and operate such system in good condition, subject to the requirements of the applicable governmental authorities, including but not limited to, any restrictions imposed or recommended during periods of drought. If individual irrigation systems are installed to serve the Lots individually, the Association may set the times at which such irrigation systems will water a Lot's landscaping, the duration of such watering and may control an Owner's use of such system, all without incurring any cost for water or other utility charge.

(b) Common Area Maintenance. The Association shall keep in good repair the Common Area, specifically including but not limited to the pool, the clubhouse, and associated improvements, and the cost of maintaining, repairing and replacing the Common Area will be assessed pursuant to ARTICLE VI.

Section 7.02     Owner's Maintenance Responsibility. Except to the extent the Association is responsible for maintenance as provided in this Declaration, all maintenance of the Lot and any improvements thereon shall be the responsibility of the Owner. The Owner of each Improved Lot must maintain the exterior of the Dwelling on such Lot, garage, and all other buildings, structures, fences, walls, recreational equipment, landscaping, and improvements located upon such Owner's Lot, in an attractive, sound and well maintained condition, including proper maintenance and repair as needed of paint, bricks, siding, roofs, exterior walls, driveways, parking areas and all other exterior portions of the Owner's residence and garage. Without limitation of the foregoing, each Owner must provide proper repair and maintenance as and when needed as follows:

- (a) The exterior paint on such Owner's Dwelling must be maintained so that no portion thereof peels, scales or cracks excessively, and all painted portions remain neat and free of mildew and discoloration. NO CHANGE IN THE EXTERIOR COLOR SCHEME OF A DWELLING AS ORIGINALLY CONSTRUCTED (INCLUDING AS TO THE ORIGINAL EXTERIOR PAINT COLOR OR COLORS OR THE CONFIGURATION OF THE COLORS) IS PERMITTED WITHOUT PRIOR WRITTEN APPROVAL FROM THE DRC.
- (b) The windows must be maintained so that no caulking thereon is chipped or cracked and no window panes are cracked or broken. All windowsills, door jams and thresholds, framing and trim for all windows and exterior doors and all hinges, latches, locks and all other hardware which are part of and/or necessary to the proper functioning of all windows and exterior doors must be maintained so that all remain whole, sound, in a neat and attractive condition and fully operational.
- (c) All exterior doors, including garage doors, must be maintained, repaired, replaced and/or repainted as needed to prevent an unkempt or unsightly appearance, to prevent leaning or listing, and such as to maintain same in proper working condition, including replacement as needed of damaged or dented garage door panels and any cracked or broken glass in any door.
- (d) All exterior surfaces on such Owner's Dwelling, including siding, brick, stone and stucco, as applicable, must be properly maintained at all times.
- (e) All exterior surfaces of such Owner's Dwelling, including the roof and all walls, windows and exterior

doors, must be periodically cleaned as needed to prevent mold, mildew or other discoloration.

- (f) The roof on such Owner's Dwelling must be maintained to prevent sagging, to prevent leaks, so that all shingles, tiles or slates are properly secured, curled shingles or damaged shingles, tiles or slates are replaced and no worn areas or holes are permitted to remain, and such that the structural integrity and exterior appearance of the roof is maintained. The appearance of the roof may not be changed by any such maintenance without the express written approval of the DRC.
- (g) The rain gutters and downspouts on such Owner's Dwelling, if any, must be maintained so that all are properly painted or treated to prevent rust and corrosion, are properly secured to roof, eaves, gables or exterior walls (as the case may be), are maintained without leaks, and are promptly repaired or replaced if dented, cracked, or otherwise damaged.
- (h) All concrete areas on such Owner's Lot, including sidewalks and driveway, must be maintained so that all cracks are appropriately patched or surfaced as they appear, expansion joints are maintained, repaired or replaced, as needed, and oil, grease and other stains are removed as they appear, and all such areas must be kept free of weeds, grass or other vegetation.
- (i) All fences or walls erected on such Owner's Lot must be maintained to prevent any listing or leaning, and all broken or damaged members and all holes and cracks must be repaired so that no portion thereof is permitted to rot or decay. WOODEN FENCES MUST BE STAINED IN ACCORDANCE WITH DRC REQUIREMENTS.
- (j) All recreational equipment, which may be installed if and only if approved by the DRC, must be maintained to prevent any unsightly or unkempt condition.
- (k) All grass, shrubbery, trees, flower beds, vegetation and all other landscaping, either natural or artificial, on a Lot which is not maintained by the Association must be properly irrigated and otherwise properly maintained by and at the sole cost of the Owner of such Lot at all times in accordance with the seasons. This maintenance includes without limitation all maintenance as is reasonably necessary to obtain and maintain on a consistent and continuing basis a sanitary, healthful and attractive condition and appearance and to eliminate any condition which may create any unsanitary condition or become a harborage for rodents, vermin or other pests, including, to the extent not provided by the Association, regular mowing and edging of grass, and, if any grass or shrubs become diseased or die, prompt replacement thereof with grass or shrubs of like kind and quality. IN ANY CASE WHERE AN IMPROVED LOT ABUTS A STREET, THE OWNER MUST IRRIGATE AND MAINTAIN ALL LANDSCAPING TO THE STREET CURB REGARDLESS OF WHETHER THE LOT LINE IN FACT EXTENDS TO THE STREET CURB, IF AND TO THE EXTENT ANY SUCH AREA IS NOT MAINTAINED BY THE ASSOCIATION.

**Section 7.03     Adjacent or Adjoining Owners.** No Owner or their tenant shall allow any condition to exist or fail or neglect to provide any maintenance which materially and adversely affects any adjoining or adjacent Lot, any Area of Common Responsibility, or any improvements on any such Lot or the Area of Common Responsibility.

**Section 7.04     Remedy for Owner's Failure to Maintain.** In the event the Board or the Master Association determine that (i) an Owner may have or has failed or refused to discharge properly the Owner's maintenance obligations as provided in this Article, or (ii) the need for maintenance, repair, or replacement which is the responsibility of the Association hereunder may have or has been caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective related parties, then the Board or the Master Association may conduct inspections of any affected Lot, the exterior of the residence and all other buildings thereon, and all other structures and improvements thereon (a "Compliance Inspection") and/or perform the repair, replacement or maintenance (the "Required Work") in accordance with this Section.

The Board or the Master Association must give written notice of intent to conduct a Compliance Inspection and/or to perform Required Work. The notice may be given by posting on the front door of the Dwelling at the applicable Lot regardless of any other address maintained by the Owner. Except in the case of an "emergency", the notice must give the applicable Owner not less than ten (10) days to schedule a Compliance Inspection and/or to

perform Required Work (or to commence and thereafter proceed with diligence to completion of Required Work which cannot be reasonably completed in ten (10) days), failing which the Board or the Master Association may proceed without further notice. For the purposes of this Section 7.04, "emergency" means (i) any condition which may or does cause an imminent risk of infestation by termites, rats or other vermin, or any other health, fire or safety hazard, (ii) any condition which may or does cause water infiltration in to another Lot, Common Areas or any improvements located thereon, and (iii) any other thing, condition or exigent circumstances which may or does present an imminent risk of harm or damage to any Lot or Area of Common Responsibility, or any improvements thereon or to any Owners or occupants thereof. In the case of an emergency the Board or the Master Association may proceed immediately with any Required Work as either deems necessary to abate the emergency, but will thereafter proceed as aforesaid.

All costs and expenses of conducting a Compliance Inspection as to which a violation is determined to exist and all costs and expenses of Required Work performed by the Board or the Master Association will be assessed against the applicable Lot and the Owner thereof as a special assessment which must be paid within ten days after notice of same is given to the applicable Owner. The good faith determination by the Board or the Master Association as to the need for a Compliance Inspection and as to all aspects of Required Work is final and conclusive, and extends to any condition as to such Lot or which adversely affects any other Lot or Area of Common Responsibility. The Association, the Board or the Master Association and their related parties are not liable for trespass or any other tort or claim for damages in connection with any actions or failure to act pursuant to this Section.

#### Section 7.05     Damage or Destruction.

- (a) Required Repair; Permitted Removal. Whether or not insured, in the event of damage, casualty loss or other destruction to all or any portion of a Dwelling, garage, building, structure or other improvement (a "Damaged Improvement"), any Damaged Improvement must be repaired, reconstructed or replaced in its entirety, or it must be demolished and removed as hereafter provided.
- (b) Manner of Repair or Removal. All repair, reconstruction or replacement of any Damaged Improvement must be performed in such manner as to restore the Damaged Improvement to substantially the same exterior dimensions and appearance (including as to color, type and quality of materials and as to architectural style and details) as, and must be located in substantially the same location as, when the Damaged Improvement was originally constructed, or to such other appearance and condition as approved by the DRC. If the Damaged Improvement is not repaired, reconstructed or replaced as aforesaid, then the Damaged Improvement must be removed in its entirety from the Lot, including removal of any foundation, and all other restoration work performed, including grading and sodding, as is required such that after demolition and removal Architectural Guidelines are maintained as determined by the DRC.
- (c) Time Limits. All work regarding a Damaged Improvement must be completed within sixty (60) days after the date of occurrence of the damage, casualty loss or other destruction; or, where such work cannot be completed within the applicable period of time, the work must be commenced within such period and completed within a reasonable time thereafter. In all events, all such work must be completed within ninety (90) days after the date of occurrence of the damage, casualty loss or other destruction unless, for good cause shown, a longer period is approved by the DRC.

### ARTICLE VIII     ARCHITECTURAL CONTROL

Architectural review and approval of any improvement to be constructed or installed on any Lot or the Area of Common Responsibility and any change or modification of any such improvement shall be subject to the architectural control provisions set forth in with Article IV of the Master Declaration and other provisions of the Master Documents.

### ARTICLE IX     INSURANCE.

Section 9.01     Association Insurance. The Association shall obtain and maintain commercial general liability insurance of at least One Million and 00/100 Dollars (\$1,000,000.00), and, if reasonably available, directors' and officers' liability insurance. Policies may contain a reasonable deductible as determined by the Board of Directors.

In addition, the Board of Directors shall obtain worker's compensation insurance, if and to the extent necessary to satisfy the requirements of applicable laws, and a fidelity bond or bonds on all persons handling or responsible for the Association's funds, if reasonably available. If obtained, the amount of fidelity coverage shall at least equal three months' total assessments plus reserves on hand. Fidelity coverage shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation. All such insurance coverage shall be written in the name of the Association.

**Section 9.02 Individual Insurance.** Each Owner, by virtue of taking title to a Lot subject to this Declaration, acknowledges that the Association has no obligation to provide any insurance for any portion of individual Lots. Each Owner covenants and agrees with all other Owners and with the Association that each Owner of an Improved Lot will maintain at all times all-risk casualty insurance as well as a liability policy covering damage or injury occurring on a Lot. The casualty insurance shall cover loss or damage by fire and other hazards commonly insured under an all-risk policy, if reasonably available, and shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction of a covered item in the event of damage or destruction from any such hazard.

The Board has the right, but not the obligation, to require the Owner to furnish a copy of such insurance policy or policies to the Association. In the event that any such Owner fails to obtain insurance as required by this Section, the Association has the right, but not the obligation, to purchase such insurance on behalf of the Owner and to assess the cost thereof to the Owner, to be collected in the manner provided for collection of assessments herein.

Upon request by the Board, the Owner shall furnish a copy of such insurance policy or policies to the Association.

**Section 9.03 Additional Insurance Requirements.**

The Board of Directors shall utilize reasonable efforts to include the following provisions in the policies that the Association obtains:

- (a) waiver of the insurer's rights of subrogation of any claims against directors, officers, the managing agent, the individual Owners, occupants, and their respective household members;
- (b) an agreed value endorsement and an inflation guard endorsement; and
- (c) until the expiration of thirty (30) days after the insurer gives notice in writing to the Mortgagee of any Lot, the Mortgagee's insurance coverage will not be affected or jeopardized by any act or conduct of the Owner of such Lot, the other Owners, the Board of Directors, or any of their agents, employees, or household members, nor be canceled for nonpayment of premiums.

All policies of insurance shall be written with a company licensed to do business in the State of North Carolina. Exclusive authority to adjust losses under policies obtained by the Association shall be vested in the Association's Board of Directors; provided, however, no Mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.

Nothing contained herein gives any Owner or other party a priority over the rights of first Mortgagees as to distribution of insurance proceeds. Any insurance proceeds payable to the Owner of a Lot on which there is a Mortgagee endorsement shall be disbursed jointly to such Lot Owner and the Mortgagee. This is a covenant for the benefit of any such Mortgagee and may be enforced by any such Mortgagee. In the event of an insured loss, any required deductible shall be considered a maintenance expense to be paid by the person or persons who would be responsible for such loss in the absence of insurance. If the loss affects more than one Lot, the cost of the deductible may be apportioned equitably by the Board among the parties suffering loss in proportion to each affected Owner's portion of the total cost of repair. Notwithstanding this, if the insurance policy provides that the deductible will apply to each Lot separately or to each occurrence, each Lot Owner shall be responsible for paying the deductible pertaining to his or her Lot, if any. If any Owner or Owners fail to pay the deductible when required under this subparagraph, then the Association may pay the deductible and assess the cost to the Owner or Owners pursuant to the terms of this Declaration.

Nothing contained herein requires the Association to make a claim under the insurance policies upon the occurrence of an insured event. The Association has the right to exercise reasonable business judgment in all insurance decisions.

## ARTICLE X      MORTGAGEE PROVISIONS.

Section 10.01    Notice of Action. An institutional holder, insurer, or guarantor of a first Mortgage, who provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the Lot number, therefore becoming an "Eligible Holder"), will be entitled to timely written notice of any of the following events occurring within twelve (12) months after receipt of such request: (a) any condemnation loss of any casualty loss which affects a material portion of the Property or which affects any Lot on which there is a first Mortgage held, insured, or guaranteed by such eligible holder; (b) any delinquency in the payment of assessments or charges owed by an Owner of a Lot subject to the Mortgage of such eligible holder where such delinquency has continued for a period of sixty (60) days; (c) any default in the performance by the Owner of such encumbered Lot of any obligation under the Declaration or Bylaws of the Association which is not cured within sixty (60) days; and (d) any lapse, cancellation, or material modification of any insurance policy maintained by the Association.

Section 10.02    Audit. Upon written request of an Eligible Holder and upon payment of all necessary costs, such Eligible Holder shall be entitled to receive a copy of audited financial statements of the Association within ninety (90) days of the date of the request.

Section 10.03    No Priority. No provision of this Declaration or the Bylaws gives any Owner or other party priority over any rights of a Mortgagee of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or taking of the Common Areas.

Section 10.04    Failure of Mortgagee to Respond. Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Association's request, provided such request is delivered to the Mortgagee by certified or registered mail, return receipt requested.

## ARTICLE XI      RESTRICTIONS.

To provide for the maximum enjoyment of the Lots by all of the residents thereof and to provide protection for the value of the same, the use of the Lots shall be restricted to, and shall be only in accordance with, the applicable zoning ordinances with respect to the Property, the restrictions of the Master Documents, and the following provisions:

Section 11.01    Leases. No portion of a Dwelling (other than an entire Dwelling) may be rented. Leasing of any Dwelling is restricted as set forth in the Master Declaration, as amended. All leases authorized pursuant to the Master Declaration must be in writing and must include a statement in conspicuous type that the Dwellings in Encore at Wendell Falls are intended for the housing of persons fifty-five (55) years of age or older, as set forth in Article XVI. Owners shall clearly disclose such intent to any prospective tenant or other prospective resident of the Dwelling. Every lease of a Dwelling shall provide that failure to comply with the requirements and restrictions of Article XVI shall constitute a default under the lease. No lease shall be for a period of less than twelve (12) months without the approval of the Board. A copy of the proposed lease and any documentation required by the Association to verify compliance with the requirements of ARTICLE XVI, must be delivered to the Association prior to occupancy by the tenant. The Owner of a leased Dwelling shall be jointly and severally liable with his tenant to the Association to pay any claim for injury or damage to property caused by the negligence of the tenant. Every lease shall be subordinated to any lien filed by the Association whether before or after such lease was entered into.

Section 11.02    Master Declaration; Master Association. The Property is subject to the easements, covenants, conditions, restrictions of the Master Declaration and to the jurisdiction of the Master Association. Declarant hereby

grants to the Developer the non-exclusive right to enforce the terms and conditions of this Declaration.

## ARTICLE XII    AMENDMENT

During the Development Period, the Declaration may be amended by an instrument signed by both the Developer and Declarant, without the consent of any other Lot Owners, except that any such amendment shall not adversely affect the title to any Owner's Lot unless such Lot Owner shall consent thereto in writing. Except as otherwise provided herein, this Declaration may be amended only upon the affirmative vote or written consent, or any combination thereof, of two-thirds (2/3) of the Lot Owners, with the consent of the Declarant during the Development Period, and the consent of the Developer, so long as the Developer has any rights under the Master Declaration. For purposes of this Section, Exhibit "A" and Exhibit "B" shall be deemed a part of this Declaration. Exhibit "C" is attached for informational purposes only and may be amended by the Declarant during the Development Period and by the Board thereafter.

Any amendment shall become effective upon the recording with the Register of Deeds of the instrument evidencing such change unless a later effective date is specified therein. If an Owner consents to an amendment to this Declaration or the Bylaws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any challenge to an amendment must be made within six months of the recording of the amendment or such amendment shall be presumed to have been validly adopted and to be valid.

Every Owner, by taking record title to a Lot, and each holder of a mortgage upon any portion of any Lot, by acceptance of such mortgage, hereby agrees that the terms, provisions, covenants and restrictions of this Declaration may be amended as provided herein.

## ARTICLE XIII    NON-ARBITRAL PROCEEDINGS.

Except as otherwise limited by this ARTICLE XIII, enforcement of these covenants and restrictions pertaining to: (a) actions brought by the Association against Owners (excluding Declarant) to enforce the provisions of this Declaration (including the foreclosure of liens); (b) the collections of assessments; (c) proceeding involving challenges to ad valorem taxation; (d) counterclaims brought by the Association in proceedings instituted against it; or (e) any claim brought by or against the Master Association or the Developer; ((a)-(e) hereinafter collectively "Non-Arbitral Proceedings"), may be by any proceeding at law or in equity, after compliance with the dispute resolution procedures set forth in the Master Declaration, if applicable.

## ARTICLE XIV    ARBITRAL PROCEEDINGS.

Any dispute other than the Non-Arbitral Proceedings described in ARTICLE XIII above, arising out of or related, in whole or in part to this Declaration, or the Property, or any portion thereof or improvement thereon, including any claim involving the Declarant ("Arbitral Proceedings"), shall be resolved in accordance with the procedures described below; provided, if the dispute is also subject to the dispute resolution procedures set forth in the Master Declaration, then compliance with the procedures set forth in the Master Declaration shall be deemed to satisfy the requirements of Section 14.02 hereunder.

Section 14.01    Negotiation. Before any other action is taken on an Arbitral Proceeding, the parties thereto shall attempt to resolve the dispute through negotiation and the following procedures.

- (a) Alleged Construction Defects. No Person shall retain an expert for the purpose of inspecting the design or construction of any structures or improvements within the Property in connection with or in anticipation of any potential or pending claim, demand, or litigation involving such design or construction unless Developer, Declarant, and any architect, engineer, or landscape professional involved in the design or construction (the "Respondent") have been first notified in writing and given the opportunity to meet with the Person contemplating the engagement of an expert (the "Claimant"), to conduct an inspection, and to repair deficiencies, if any, identified by the Respondent. If after providing such opportunity to the Respondent the Claimant elects to retain an expert, the Claimant shall thereafter deliver to the Respondent

written notice that includes, at a minimum, (a) a description of the alleged defect; (b) a certification from an architect or engineer licensed in the State of North Carolina that such alleged defect exists along with a description of the scope of work necessary to cure such alleged defect and a resume of such architect or engineer; and (c) the cost to cure such alleged defect as estimated by the architect or engineer. After delivering the notice required by the preceding sentence the Claimant shall afford the Respondent a reasonable opportunity to cure the alleged defect before initiating any proceedings pursuant to Section 14.02 and 14.03.

- (b) All other Arbitral Disputes. In all Arbitral Disputes other than construction defect claims which are addressed by the preceding Section, the Person asserting or contemplating the assertion of claims (also referred to herein as the "Claimant") shall provide the party against whom the claim is asserted (also referred to herein as the "Respondent") with written notice of the Arbitral Dispute, which notice must include the Claimant's position with regard to facts, circumstances and law related to the issues to be resolved, together with all documents and evidence that supports such position, and after delivery of such notice the parties shall meet in person and confer for the purpose of attempting to resolve a Arbitral Dispute by good faith negotiation.

Section 14.02 Mediation. If the parties to an Arbitral Dispute have not resolved their Arbitral Dispute pursuant to the procedures described in the preceding Section 14.01(a) or Section 14.01(b), as applicable, within ninety (90) days, the Claimant shall have thirty (30) days after the termination of negotiations within which to submit the Arbitral Dispute to mediation pursuant to the mediation procedures in the North Carolina Rules Implementing Statewide Mediated Settlement Conferences and Other Settlement Procedures in Superior Court Civil Actions or to any other rules upon which the parties to the Arbitral Dispute may mutually agree. Persons other than the parties to the Arbitral Dispute may attend mediation sessions only with the permission of all parties to the Dispute and the consent of the mediator. Confidential information disclosed to a mediator by the parties to the Arbitral Dispute or by witnesses in the course of the mediation shall be kept confidential. There shall be no stenographic record of the mediation process. The expenses of witnesses for either side shall be paid by the party producing such witnesses. All other expenses of the mediation, including, but not limited to, the fees and costs charged by the mediator and the expenses of any witnesses or the cost of any proof of expert advice produced at the direct request of the mediator, shall be borne equally by the parties to the Dispute unless agreed to otherwise. Each party to the Dispute shall bear their own attorneys' fees and costs in connection with such mediation.

Section 14.03 Final and Binding Arbitration. If the parties cannot resolve their Arbitral Dispute pursuant to the procedures described in Section 14.01 above, the Claimant shall have ninety (90) days following termination of mediation proceedings (as determined by the mediator) to submit the Arbitral Dispute to final and binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association or the Construction Arbitration Rules of the American Arbitration Association, as determined applicable by the arbitrator, the American Arbitration Association or as agreed upon by the parties, as such rules are modified or as otherwise provided in this ARTICLE XIV. If the Claimant does not submit the Arbitral Dispute to arbitration within ninety (90) days after termination of mediation proceedings, the Claimant shall be deemed to have waived any claims related to the Arbitral Dispute and all other parties to the Arbitral Dispute shall be released and discharged from any and all liability to the Claimant on account of such Arbitral Dispute; provided, nothing herein shall release or discharge such party or parties from any liability to a person or entity not a party to the foregoing proceedings.

The existing parties to the Arbitral Dispute shall cooperate in good faith to ensure that all necessary and appropriate parties are included in the arbitration proceeding. No Declarant shall be required to participate in the arbitration proceeding if all parties against whom a Declarant would have necessary or permissive cross-claims or counterclaims are not or cannot be joined in the arbitration proceedings. Subject to the limitations imposed in this Section 14.03, the arbitrator shall have the authority to try all issues, whether of fact or law.

- (a) Place. The arbitration proceedings shall be heard in the County where the Property is located.
- (b) Commencement and Timing of Proceeding. Arbitration may not be commenced or prosecuted by or on behalf of the Association unless approved by at least seventy-five percent (75%) of the Lot Owners, which approval must be accompanied by the approval of a reasonable arbitration budget and the approval and collection of a Special Assessment in an amount equal to such budget to be levied equally among the Lots and collected before commencement of any action. The arbitrator shall determine whether the Association

or a Claimant acting on behalf of the Association has satisfied the requirements of this Subsection (b) before commencing any arbitration and shall promptly commence the arbitration proceeding at the earliest convenient date in light of all of the facts and circumstances and shall conduct the proceeding without undue delay, and in no case greater than sixty (60) days from the date of the demand or if the requirement of this Subsection (b) has not been met find for the Respondent on all claims.

- (c) Discovery. The parties to the Arbitral Dispute shall be entitled to limited discovery only, consisting of the exchange between the parties of the following matters: (i) witness lists; (ii) expert witness designations; (iii) expert witness reports; (iv) exhibits; (v) reports of testing or inspections of the property subject to the Arbitral Dispute, including but not limited to, destructive or invasive testing; and (vi) trial briefs. The Respondent shall also be entitled to conduct further tests and inspections as provided in Section 14.01(a) above. Any other discovery shall be permitted by the arbitrator upon a showing of good cause or based on the mutual agreement of the parties to the Arbitral Dispute. The arbitrator shall oversee discovery and may enforce all discovery orders in the same manner as any trial court judge.
- (d) Limitation on Remedies/Prohibition on the Award of Punitive Damages. Notwithstanding contrary provisions of the Commercial Arbitration Rules, the arbitrator in any proceeding shall not have the power to award punitive, consequential or statutory damages (all such damages being hereby waived by all Owners and the Declarant); however, the arbitrator shall have the power to grant all other legal and equitable remedies and award compensatory damages. The arbitrator's award may be enforced as provided for under North Carolina Law, or such similar law governing enforcement of awards in a trial court as is applicable in the jurisdiction in which the arbitration is held.
- (e) Motions. The arbitrator shall have the power to hear and dispose of motions, including motions to dismiss, motions for judgment on the pleadings, and summary judgment motions, in the same manner as a trial court judge, except the arbitrator shall also have the power to adjudicate summary issues of fact or law including the availability of remedies, whether or not the issue adjudicated could dispose of an entire cause of action or defense.
- (f) Expenses of Arbitration. Each party to the arbitration shall bear all of its own costs incurred prior to and during the arbitration proceedings, including the fees and costs of its attorneys or other representatives, discovery costs, and expenses of witnesses produced by such party. Each party to the Arbitral Dispute shall share equally all charges rendered by the arbitrator unless otherwise agreed to by the parties, or unless such party has waived its right to require arbitration of such dispute under this Section 14.03 prior to the commencement of such arbitration. As an express limitation to the foregoing, the arbitrator's award shall include the costs and expenses, including attorneys' fees, incurred by the party the arbitrator determines to have prevailed.
- (g) Enforcement of Resolution. If the parties to a Arbitral Dispute resolve such Arbitral Dispute through negotiation or mediation in accordance with Section 14.01 or Section 14.02 above, and any party thereafter fails to abide by the terms of such negotiation or mediation, or if an arbitration award is made in accordance with Subsection (d) and any party to the Arbitral Dispute thereafter fails to comply with such resolution or award, then the other party to the Arbitral Dispute may file suit or initiate administrative proceedings to enforce the terms of such negotiation, mediation, or award without the need to again comply with the procedures set forth in this Subsection (g). In such event, the party taking action to enforce the terms of the negotiation, mediation, or the award shall be entitled to recover from the non-complying party (or if more than one non-complying party, from all such parties pro rata), all costs incurred to enforce the terms of the negotiation, mediation or award including, without limitation, attorneys' fees and court costs.

Section 14.04 Amendment. This ARTICLE XIV shall not be amended unless such amendment is approved by Developer, Declarant, and at least eighty percent (80%) vote of the Class A Members.

## ARTICLE XV    DEVELOPMENT ACTIVITIES

**Section 15.01    Development Activities.** Developer, Declarant, any authorized Builder, the constructors, sub-contractors, suppliers, vendors, sales agents, realtors and all other related personnel of Developer, Declarant or, any authorized Builder (all such Persons sometime herein referred to as “Development Personnel”) have the right to transact any business and conduct any activities reasonably necessary for all construction within, and all development of, the Property, and for the sale of Lots and single family residences and any other improvements to be constructed within the Property (all such construction, development, sales and all related business and activities herein referred to as “Development Activities”), including without limitation as set forth in this Section 15.01.

**Section 15.02    Marketing.** Declarant and Developer (and any authorized Builder) have the right to maintain models, to have, place and maintain sales and promotional signs, flags, banners and similar promotional devices within the Properties, to conduct from time to time an “open house” and similar events for realtors and other persons which may include without limitation leaving limited access gates (if any) open as hereafter provided, and to use for development, sales and/or promotional purposes all or any part of any Lot, including residence or other improvements located thereon, which is owned by Declarant or an authorized Builder.

**Section 15.03    Access.** IF AND TO THE EXTENT THAT ANY PATROL OR ACCESS SERVICES, STRUCTURES OR DEVICES, INCLUDING ANY CONTROLLED ACCESS GATE, GUARDHOUSE AND RELATED STRUCTURES AND DEVICES (“PATROL/ACCESS DEVICES”), ARE PROVIDED FOR THE PROPERTIES, THEN DURING THE DEVELOPMENT PERIOD, DECLARANT RETAINS FULL AND SOLE AUTHORITY AS TO AND CONTROL OVER THE SAME. DECLARANT’S AUTHORITY AND CONTROL INCLUDES THE RIGHT IN DECLARANT’S SOLE DISCRETION TO DETERMINE THE HOURS, STAFFING AND MANNER OF OPERATION OF ANY AND ALL SUCH PATROL/ACCESS DEVICES, IF ANY. WITHOUT LIMITATION OF THE FOREGOING, DECLARANT IS EXPRESSLY AUTHORIZED DURING THE DEVELOPMENT PERIOD TO DETERMINE IF AND WHEN ANY PATROL/ACCESS DEVICES WILL BE OR BECOME FUNCTIONAL OR OPERATIONAL, INCLUDING THE SOLE RIGHT AND AUTHORITY TO DETERMINE IF AND WHEN ANY CONTROLLED ACCESS GATE WILL BE OR BECOME FUNCTIONAL, AND IF AND WHEN TO LEAVE ANY CONTROLLED ACCESS GATES OPEN FOR ANY PERIODS OF TIME (OR AT ALL TIMES). DURING THE DEVELOPMENT PERIOD DECLARANT MAY ALSO PERMIT, AND AFTER THE DEVELOPMENT PERIOD THE ASSOCIATION AND THE BOARD MUST ALSO PERMIT AND TAKE ALL NECESSARY ACTIONS TO FACILITATE ACCESS TO THE PROPERTY BY ANY DEVELOPMENT PERSONNEL INVOLVED IN ANY DEVELOPMENT ACTIVITIES, BY ANY PROSPECTIVE PURCHASERS, BY ANY SALES AGENTS OR REALTORS AND BY ANY OTHER PERSONS AS DECLARANT REASONABLY DETERMINES IS NECESSARY OR CONVENIENT TO ACCOMMODATE ANY DEVELOPMENT ACTIVITIES. NO PROVISIONS OF THIS DECLARATION, AND NO OTHER STATEMENTS OR COMMUNICATIONS BY DECLARANT OR THE ASSOCIATION, OR ANY RELATED PARTIES OF EITHER, SHALL EVER CONSTITUTE ANY REPRESENTATIONS OR WARRANTIES BY DECLARANT, THE ASSOCIATION, OR THE RELATED PARTIES OF EITHER, CONCERNING THE HOURS, STAFFING OR MANNER OF OPERATION OF ANY PATROL/ACCESS DEVICES, OR CONCERNING ANY SAFETY OR SECURITY BENEFITS OR PROTECTION REGARDING ANY OF THE SAME, ANY AND ALL SUCH REPRESENTATIONS AND WARRANTIES BEING HEREBY EXPRESSLY DISCLAIMED.

**Section 15.04    Construction.** Subject to such limitations as may be imposed by the Master Documents or pursuant to agreements with the Developer, Development Personnel may engage in construction activities, store equipment or materials, and otherwise engage in activities and create conditions related to development of the Property, including the construction and sale of residences and any other improvements in the Property, upon multiple Lots, Area of Common Responsibility and any other properties within the Property, excluding any Lot after the initial sale of the Lot to an Owner other than Declarant or an authorized Builder. Without limitation of the foregoing, Declarant and any authorized Builder are specifically authorized to engage in any of the foregoing activities and any other Development Activities at any times and on any days (including Sundays and holidays) as Declarant or the authorized Builder deems necessary, subject to Declarant’s right to regulate authorized Builders as herein provided.

**Section 15.05    Use of Common Areas.** Subject to such limitations as may be imposed by the Master Documents or pursuant to agreements with the Developer, during the Development Period, Developer and Declarant’s Development Personnel (and Development Personnel of any authorized Builder to the extent expressly permitted by Declarant) may use for any Development Activities, without charge, any Common Area (including improvements

thereon).

**Section 15.06 Construction Facilities.** Subject to such limitations as may be imposed by the Master Documents or pursuant to agreements with the Developer, Declarant (and any authorized Builder) may permit temporary toilet facilities, sales and construction offices and storage areas to be used in connection with the construction and sale of residences at such locations as Declarant may direct. Declarant may also authorize usage of garages as sales offices during the Development Period. At or prior to the date of the sale of a Lot to an Owner other than Declarant or an authorized Builder, any garage appurtenant to the residence located on the Lot used for sales purposes must be fully reconverted to a garage, and any such other Owner or their successors in title shall be responsible for completion of the reversion to any extent the reversion is not completed as aforesaid.

**Section 15.07 Parking.** Development Personnel may park vehicles in the street or designated parking locations within the Property as is necessary to conducting of any Development Activities, as long as they don't block vehicular access through the streets or a private driveway, if any, as to any residence which is owned by an Owner other than Declarant or an authorized Builder and which is occupied by the Owner or their tenant.

**Section 15.08 Construction Regulations.** Declarant may establish any reasonable regulations which Declarant deems appropriate to avoid hindrance or interference with any Development Activities, including limiting or denying access to areas of the Property which Declarant owns, and subject to prior approval of Developer, authorizing use of Common Areas and/or improvements thereon in connection with its Developmental Activities.

**Section 15.09 Time Period.** Except as stated in Section 15.05 all provisions of this ARTICLE XV apply to each Lot owned by Developer, Declarant or an authorized Builder until completion of the initial sale of the last Lot in the Property, whether or not completion of the initial sale occurs during or after the Development Period.

**Section 15.10 Liability.** ABSENT INTENTIONAL AND WILLFUL MISCONDUCT, DEVELOPER, DECLARANT, ITS RELATED PARTIES AND ALL OTHER DEVELOPMENT PERSONNEL (INCLUDING AS TO ANY AUTHORIZED BUILDER) ARE NOT LIABLE TO ANY OWNER OR TENANT, OR TO THE ASSOCIATION OR DRC, OR TO ANY RELATED PARTIES OF ANY OF THE FOREGOING, OR TO ANY OTHER PERSON FOR ANY CONSEQUENCES OF THE REASONABLE CONDUCTING OF ANY DEVELOPMENT ACTIVITIES.

## ARTICLE XVI AGE RESTRICTION

**Section 16.01 General.** Encore at Wendell Falls is established as a senior housing community designed and intended to provide housing for persons fifty-five (55) years of age or older, although younger persons are not restricted from occupying a Dwelling along with a person fifty-five (55) years of age or older so long as such co-occupancy is in compliance with this Section 16.02. In addition, certain exceptions may be made pursuant to Section 16.02(a)(i)-(a)(iii). The provisions of this section are intended to be consistent with, and are set forth in order to comply with, the "housing for older persons" exemption ("HOPA Exemption") from prohibitions on discrimination based on familial status under the federal Fair Housing Act, 42 U.S.C. § 3601, et seq., as it may be amended and the North Carolina Fair Housing Act, NCGS § 41A-1, et seq., as it may be amended (collectively, the "Fair Housing Acts"). Declarant, during the Development Period, and the Board thereafter, shall have the power to amend this Article XVI, without the consent of the members of the Association or any other Person except Developer, as necessary to make this Article XVI compliant with the HOPA Exemption under the Fair Housing Acts, the regulations adopted pursuant thereto, as they may be amended, and any judicial decisions arising thereunder or otherwise relating thereto, in order to maintain the intent and enforceability of this Article XVI.

### Section 16.02 Requirements for Occupied Dwellings.

(a) Each occupied Dwelling shall at all times have as a Permanent Resident (as defined herein) at least one person who is fifty-five (55) years of age or older (the "Qualifying Occupant"), except that:

(i) In the event of the death of a person who was the sole Qualifying Occupant of a Dwelling, or the illness or disability of the sole Qualifying Occupant requiring their transfer to a health care facility, nursing home, or assisted living, personal care, continuing care, or similar facility providing assistance with daily personal needs and/or health care, the spouse of such Qualifying Occupant residing in the Dwelling immediately prior to such event and any other person then occupying the Improved Lot in compliance with this Section 16.02 may continue to

occupy the Dwelling, provided that they notify the Board in writing within ten (10) days after the death or relocation of the Qualifying Occupant and such continued occupancy would not cause Encore at Wendell Falls to be in noncompliance with the requirements of the HOPA Exemption under the Fair Housing Acts or the requirements of applicable zoning as of the date of the Board's receipt of such notice;

(ii) During the Development Period, Declarant may grant an exception to this requirement, provided the requirements for the HOPA Exemption under the Fair Housing Acts and the requirements of applicable zoning would still be met, to permit occupancy of a specific Dwelling by the particular individuals for whom the exception is made. Any such exception shall be made only in a writing signed by the Declarant, and shall identify the specific individuals and Dwelling which they are authorized to occupy, and shall apply only to occupancy by the specific individuals so named; and

(iii) In addition to the above, Declarant and any other Owner may request in writing that the Board make an exception to the requirements of this Section 16.02(a) with respect to such Owner's Dwelling. The Board may adopt and publish rules and policies for considering and granting such requests, including policies regarding the form of such request and the information that must be provided with such request. The Board shall respond to any such request within ten (10) calendar days after receipt of such request and all information required to accompany such request, as specified by Board rules and policies. The Board may, but shall not be obligated to, grant exceptions under this subparagraph (iii) in its sole discretion, provided the requirements for the HOPA Exemption under the Fair Housing Acts and the requirements of applicable zoning would still be met.

(b) For purposes of this Article XVI, an occupant shall not be considered a "Permanent Resident" unless such occupant considers the Lot to be his or her legal residence and actually resides in the Dwelling for at least six (6) months during every calendar year or such shorter period as the Dwelling is actually occupied by any person.

**Section 16.03 Transfer of Title.** Nothing in this Article XVI is intended to restrict the ownership of or transfer of title to any Dwelling; however, no Owner may occupy the Dwelling unless the requirements of this Article XVI are met, nor shall any Owner permit occupancy of the Dwelling by any person in violation of this Article XVI.

**Section 16.04 Restrictions on Occupancy by Persons under the Age of 25.** No Dwelling shall be occupied by any person under the age of twenty-five (25), except that one person under the age of twenty-five (25) may occupy a Dwelling with prior notice to and approval of the Board if such person is at least eighteen (18) years of age and the Board reasonably determines that such occupancy is necessary to provide reasonable accommodation for the health care needs of the person's handicapped parent or grandparent who is residing in the Dwelling in full compliance with this section and would be unable to continue to reside in the Dwelling without such person's care. For purposes of this subsection (c), a Dwelling shall be deemed to be "occupied" by any person who stays overnight in the Dwelling more than ninety (90) nights, consecutive or nonconsecutive, in any twelve (12) month period; however, no person under the age of eighteen (18) may stay overnight in a Dwelling more than fourteen (14) days in any consecutive twelve (12) month period.

**Section 16.05 Restrictions on Regular Visitation by Persons under the Age of 18.** No person shall provide care or supervision for compensation in or from a Dwelling to a person under the age of eighteen (18).

**Section 16.06 Change in Occupancy.**

(a) In the event of any change in occupancy of any Dwelling as a result of a transfer of title, a lease, a birth or death, a change in marital status, vacancy, change in location of permanent residence, or otherwise, the Owner of the Dwelling shall immediately notify the Board in writing and provide to the Board the names and ages of all persons residing in the Dwelling immediately following such change in occupancy and such other information as the Board may reasonably require to verify the age of each such person. In the event that an Owner fails to notify the Board and provide all required information within ten (10) days after a change in occupancy occurs, the Association shall be authorized to levy monetary fines against the Owner and the Dwelling for each day after the change in occupancy occurs until the Association receives the required notice and information, regardless of whether the Dwelling continues to meet the requirements of Article XVI, in addition to all other remedies available to the Association under this Declaration and North Carolina law, which may include dispossession or eviction proceedings, subject to any

limitations of North Carolina law.

(b) Within thirty (30) days after the Qualifying Occupant of a Dwelling or any other person granted an exemption pursuant to Section 16.02(a), ceases to be a Permanent Resident of the Dwelling, the remaining occupants shall vacate the Dwelling unless the Board has granted an exception for the remaining occupants pursuant to Section 16.02(a).

#### **Section 16.07 Monitoring Compliance; Appointment of Attorney-in-Fact.**

(a) The Association shall maintain age records on all persons residing in each Dwelling. The Board shall adopt and publish policies, procedures, and rules to monitor and maintain compliance with this Article XVI, including policies regarding visitors, updating of age records, the granting of exceptions pursuant to Section 16.02(a), and enforcement. The Association shall periodically distribute such policies, procedures, and rules to Owners and make copies available to Owners, their tenants, and holders of security interests in any Dwelling upon reasonable request.

(b) The Association shall have the power and authority to enforce this Article XVI in any legal manner available, as the Board deems appropriate, including, without limitation, conducting a census of the persons occupying each Dwelling, requiring copies of birth certificates or other proof of age for each person occupying the Dwelling to be provided to the Board on a periodic basis, and taking action to evict the occupants of any Dwelling which is not in compliance with the requirements and restrictions of this Article XVI. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS, EVICT, OR OTHERWISE REMOVE THE OCCUPANTS OF HIS OR HER DWELLING AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS ARTICLE XVI. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Dwelling that, in the judgment of the Board, are reasonably necessary to monitor compliance with this Article XVI.

(c) Each Owner shall be responsible for ensuring compliance of its Dwelling with the requirements and restrictions of this Article XVI and the rules of the Association adopted hereunder. EACH OWNER, BY ACCEPTANCE OF TITLE TO A DWELLING, AGREES TO INDEMNIFY, DEFEND, AND HOLD THE ASSOCIATION HARMLESS FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, AND CAUSES OF ACTION THAT MAY ARISE FROM FAILURE OF SUCH OWNER'S DWELLING TO SO COMPLY. In addition, the Association shall be entitled to recover all attorneys' fees and costs actually incurred in enforcing this Article XVI from the Owner of the non-compliant Dwelling, whether or not suit is filed.

**Section 16.08 Restriction on Number of Persons Occupying Each Dwelling.** Occupancy of each Dwelling shall be limited to that number of persons equal to the number of bedrooms in the Dwelling plus one (1) additional person. For purposes of this Section 16.08, "occupancy" means staying overnight in a Dwelling for a total of more than twenty-eight (28) nights, either consecutive or nonconsecutive, in any calendar year.

**Section 16.09 Association Action.** Notwithstanding anything to the contrary herein, the Association shall not take any action that would cause the Association to lose eligibility for the HOPA Exemption described in this Article XVI without the prior written consent of Developer during the Development and Sale Period under the Master Declaration, and the Declarant during the Development Period.

## **ARTICLE XVII MISCELLANEOUS**

**Section 17.01 No Waivers.** In no event shall the failure by the Association to insist in any one or more cases upon the strict performance of any of the terms, covenants, conditions, provisions or agreements set forth in this Declaration be construed as a waiver or relinquishment of the future enforcement of any such term, covenant, condition, provision, or agreement. The acceptance of performance of anything required to be performed with knowledge of the breach of a term, covenant, condition, provision or agreement shall not be deemed a waiver of such breach, and no waiver by the Association of any term, covenant, condition, provision or agreement shall be deemed to have been made unless expressed in writing and signed by a duly authorized officer of the Association.

**Section 17.02 Duration.** Subject to amendment or termination as authorized in this Declaration, this Declaration, and all of the terms, easements, provisions, liens, charges, restrictions and covenants set forth herein, shall run with the land and shall be binding on all parties and all persons claiming under them for a period of twenty (20) years from

and after the date this Declaration is recorded, after which time such covenants and restrictions shall be automatically extended for successive periods of twenty (20) years until the recordation of an instrument of termination within two (2) years of the expiration of the initial twenty-year period or any extension thereof, such instrument having been executed by a minimum of sixty-seven percent (67%) of the record Owners of the Lots.

**Section 17.03    Notices.** Any notice required or permitted to be sent to any member of the Association pursuant to any provision of this Declaration may be served by depositing such notice in the mail, postage prepaid, addressed to the member or Owner to whom it is intended, at the address which such member shall have furnished to the Secretary of the Association in accordance with the Bylaws, or, in the absence of any such address having been so furnished to the Secretary of the Association, at the address of the Lot owned by such member. The date of service shall be the date of mailing. The address of Declarant or the Association shall be the address of its respective registered agent on file with the Secretary of State of North Carolina. The date of service shall be the date shown on the return receipt. Rejection or other refusal to accept shall be deemed to be receipt of the notice sent.

**Section 17.04    Successors to Declarant.** In the event that Declarant's contract with Developer for the purchase of any portion of the Property or any Additional Property terminates prior to the conveyance to Declarant of all Lots which Declarant agreed to purchase thereunder, Developer shall have the right to record in the Office of the Register of Deeds a Notice of Assumption of Declarant Rights under this Declaration and, upon recording of the same, shall become the Declarant hereunder and succeed to all rights of Declarant under this Declaration, the Articles of Incorporation and the Bylaws. In no event shall Developer or any person or other entity succeeding to the rights and status of Declarant by operation of law or through purchase of Declarant's interest in all or any portion of the Property at foreclosure, assignment or other means, sale under power or by deed in lieu of foreclosure, be liable for any act, omission or matter occurring, or arising from any act, omission or matter occurring, prior to the date such successor succeeded to the interest of Declarant unless expressly assumed by such successor or assign.

**Section 17.05    Right to Develop.** Developer, Declarant and their respective employees, agents, and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing and installing such improvements to the Common Area as Developer or Declarant deems appropriate in its sole discretion (subject to the Master Documents), and Declarant, Builders, and their employees, agents, and designees shall have a right to complete construction, repair and maintenance of Lots. Every Person that acquires any interest in a Lot or in the Property acknowledges that the Property is a planned community, the development of which is likely to extend over many years, and agrees not to protect, challenge, or otherwise object to (a) changes in uses or density of property, or (b) changes in the plan as it relates to property. Each Owner acknowledges, understands and covenants to inform its lessees and all occupants of its Lot that the Property and areas adjacent to the Property are subject to further development and expansion, and therefore, there may be certain inconveniences during any period of construction, and Owner as well as any of its tenants or occupants acknowledges that such construction and development is permitted by this Declaration, notwithstanding the limitations in ARTICLE XI and similar provisions, and waives all claims with respect to such inconveniences, sights, sounds, smell and conditions associated with such construction. Owner agrees that if Owner or Owner's employees, lessees, invitees, clients, customers, guests, contractors, or agents enter onto any area of construction, they do so at their own risk, and that the Declarant, Builder, and their respective contractors, agents or employees shall not be liable for any damage, loss or injury to such person.

**Section 17.06    Liability Arising from Conduct of Owners.** Each Owner, their tenants, and their respective related parties must indemnify and keep indemnified, and hold harmless, Declarant, Developer, the Association, the Master Association, and their related parties from and against all claims, damages, suits, judgments, court costs, attorney's fees, attachments, and all other legal actions caused through the willful or negligent act or omission of an Owner, the Owner's tenants, or their respective related parties.

**Section 17.07    Conflict with the Act; Conflict with Master Declaration; Severability.** Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the provisions of the Act shall control unless the Act permits the Declaration to override the Act in which event the Declaration shall control. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Master Documents, the provisions of the Master Documents shall control unless the Master Declaration permits the Declaration to override the Master Documents in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction,

condition, limitation, provision, paragraph or clause to any other person or circumstance.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, Declarant, with the consent of Developer, has caused this Declaration to be executed by its duly authorized officers on the day and year set forth below.

**DECLARANT**

WEEKLEY HOMES, LLC  
A Delaware Limited Liability Company

By: DM WEEKLEY, INC., Manager

By: Grace Atkins

Name: Grace Atkins

Its: Finance Coordinator

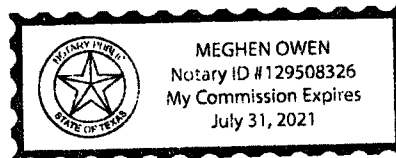
STATE OF TEXAS  
COUNTY OF HARRIS

I certify that the following person personally appeared before me this day, acknowledging to me that he voluntarily signed the foregoing document for the purpose stated therein and in the capacity indicated: Grace Atkins, Finance of DM Coordinator  
Weekley, Inc., Manager of Weekley Homes, LLC.

Witness my hand and official seal, this the 22 day of March, 2021.

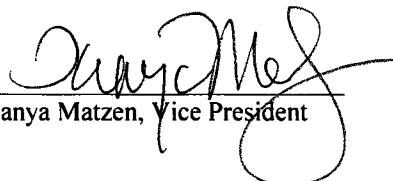
Printed Name: Meghen Owen

My commission expires: 07/31/2021



**DEVELOPER**

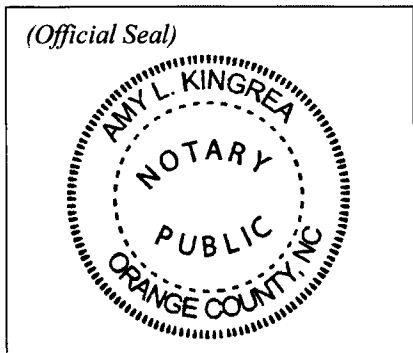
NASH WENDELL FALLS, LLC  
a Delaware limited liability company

By:   
Tanya Matzen, Vice President

STATE OF NORTH CAROLINA     )  
                                              )  
COUNTY OF WAKE                )

I, Amy L. Kingrea, a Notary Public in and for Orange County, North Carolina, certify that Tanya Matzen personally came before me this day and acknowledged that she is Vice President of NASH WENDELL FALLS, LLC, a Delaware limited liability company, and that by authority duly given and as the act of said limited liability company, she executed the foregoing instrument on behalf of said limited liability company.

Witness my hand and official stamp or seal, this 23 day of March, 2021.



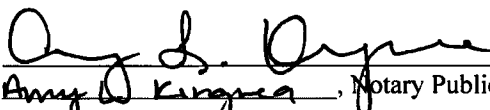
  
Amy L. Kingrea, Notary Public  
My Commission Expires: 6/23/2025

**Exhibit "A"**  
**Legal Description**

**BEING** all of the property as shown on a map entitled "Wendell Falls Development Phase 7A" dated September 17, 2020 and recorded on January 21, 2021 in Book of Maps 2021 Pages 151 through 156, inclusive, Wake County Registry.

Exhibit "B"  
Lawn Maintenance

I. Association Maintenance of Improved Lots.

a. The Association shall be responsible for performing, or causing to be performed, the following services on Improved Lots:

- i. mowing and fertilizing of lawns (including both front and rear yards of the Units), and application of weed control and fertilizer to such lawns on such schedule as the Board deems appropriate to maintain turf in a healthy condition;
- ii. weeding and mulching of planting beds and edging of curbs, walks, and planting beds as Board deems appropriate consistent with the budget; twice per year;
- iii. maintenance, repair, replacement, and operation of any centrally-controlled irrigation system or systems installed by the Declarant or its designees to serve multiple Lots ("Irrigation System"); and
- iv. such other maintenance of landscaping and hardscaping on Lots as may be funded budget adopted from time to time in accordance with the Declaration.

b. Each Owner shall clear yards and sidewalks on such Owner's Lot and adjacent rights-of-way of personal property (e.g., chairs, tables, garbage cans, hoses, toys, sports and play equipment, etc.) and obstructions, remove pets, provide gates with at least 48" of clearance to access any fenced area or courtyard, and leave such gates unlocked to permit unfettered access to fenced areas and courtyards, in order to enable maintenance personnel to perform the services to be provided by the Association hereunder. An Owner's failure to comply with this section shall relieve the Association of its responsibility hereunder with respect to such Owner's Lot to the extent that the Association or maintenance personnel determine that such noncompliance interferes with their ability to provide the required services, in which case the Owner shall perform such maintenance and repairs, at such Owner's expense, in a timely manner and without deduction from or offset against assessments due hereunder. Each Owner hereby releases the Association, its officers, directors, contractors, subcontractors, managers, agents and any maintenance provider from any claims arising out of the failure of maintenance personnel to ensure that gates are closed upon such Owner's Lot.

II. Commencement of Association's Maintenance Responsibilities. All maintenance on a Lot shall be the responsibility of the Builder or Owner until such time as the Association's responsibilities commence hereunder. The Association's responsibilities under Paragraph I above shall commence as to each Lot upon satisfaction of the following requirements:

- a. completion of construction of a dwelling and all related improvements on the Lot; and
- b. issuance of a certificate of occupancy for such dwelling and related improvements from Wake County, North Carolina; and
- c. completion of installation of landscaping on the Unit as verified by the Board; provided, nothing herein shall relieve the Builder of responsibility for removing and replacing any landscaping installed on a Unit by the Builder or its subcontractors which dies within one year after the date of the Builder's conveyance to a homeowner, to the extent required under any contract or warranty relating to the Unit.

III. The Irrigation System. The Irrigation System shall be owned and maintained by the Association as Limited Common Area for the benefit of the Lots, pursuant to a contract with Old North State Water Company or its successors and assigns (the "Water Company") or another certified reuse irrigation system maintenance provider approved by the Master

Association for maintenance and operation of the Irrigation System or to convey the Irrigation System to the Water Company or that portion of the Irrigation System on each Lot to the Owner of such Lot if the Board deems it appropriate to do so. The Association may enter into an effluent easement agreement or similar agreement with the Water Company relating to the maintenance and use of the Irrigation System and the schedule and amounts of water that may be applied to the Units pursuant to the Easements referenced in this Declaration.

The Irrigation System may use non-potable, reclaimed or "reuse" water rather than potable water. Reclaimed or reuse water, while suitable for application to landscaping, is not safe for human or animal consumption or bathing. No person other than the Declarant and Developer, the Water Company, the Association, or their respective designees shall make or authorize any additions or modifications to any portion of the Irrigation System without the prior written approval of the Water Company, in addition to such approval as required under Article IV of the Master Declaration, which approvals may or may not be granted. If granted, such approvals may be conditioned upon the Owner paying all costs of such additions or modifications and use of a contractor designated by the Association or the Water Company to perform the approved addition or modification.

**BYLAWS  
OF  
ENCORE AT WENDELL FALLS HOMEOWNERS ASSOCIATION, INC.**

**Article I.     OFFICE**

The Association shall at all times maintain a registered office in the State of North Carolina and a registered agent at that address. The Association may also have such other offices as the Board of Directors shall determine.

**Article II.    DEFINITIONS**

Unless the context requires otherwise, the terms defined in the Declaration of Covenants, Restrictions, and Easements for Encore at Wendell Falls recorded in the Wake County, North Carolina Registry (the “***Declaration***”, the Declaration being incorporated herein in its entirety) shall have the same meanings for purposes of these Bylaws as are ascribed to them in the Declaration.

**Article III.   MEMBERS**

Section 3.1    Membership. The Association shall have two classes of membership, Class A and Class B, which classes of membership shall have the rights conferred upon them by the Declaration, the Articles of Incorporation of the Association and these Bylaws.

Persons who hold an interest merely as security for the performance of an obligation are not Members, and the giving of a security interest shall not terminate a Member's membership. In no event shall there be more than one (1) membership per Lot owned. In the event of multiple Owners of a Lot, rights of use and enjoyment shall be as provided in the Declaration and in the Bylaws, but in no event shall more than one (1) vote be cast nor office held for each Lot owned.

In the event a Member is a corporation, partnership, trust, or other legal entity not being a natural person or persons, then any natural person who is an officer, director, or other designated agent of such corporation, partner of such partnership, beneficiary or other designated agent of such trust, or manager of such other legal entity shall be eligible to represent such entity in the affairs of the Association. Such person's relationship with the Association shall terminate automatically upon the termination of such person's relationship with the entity which is the Member, which will create a vacancy in any elected or appointed position within the Association in which such person may have been serving, to be filled by the Declarant or Developer, as applicable, during the Development Period, and thereafter by the Board.

Section 3.2 Annual Meeting. A meeting of the Members of the Association shall be held annually at such time and place on such date as the Board shall determine from time to time.

Section 3.3 Special Meetings. Special meetings of the Members may be called at any time by the President of the Association. Additionally, it shall be the duty of the President to call a special meeting of the Members upon being presented with a written request to do so signed (i) by a majority of the members of the Board of Directors, or (ii) after the termination of the Class B membership, by the Members of the Association entitled to cast no less than twenty percent (20%) of the total vote of the Association.

Section 3.4 Notice of Meetings. It shall be the duty of the Secretary to give a notice to each Member of each meeting of the Members at least twenty-one (21) days in advance of any annual or regularly scheduled meeting and at least seven days in advance of any other meeting. Each notice of a meeting shall state the purpose thereof, as well as the time and place where it is to be held, and shall be delivered personally or sent by United States mail, postage prepaid, to all Owners of record at such address or addresses as designated by such Owners or, if no other address has been so designated, at the address of their respective Lot.

Section 3.5 Waiver of Notice. Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any Association meeting, either before or after such meeting. Attendance at a meeting by a Member, whether in person or represented by proxy, shall be deemed a waiver by such Member of notice of the time, date, and place thereof unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted at such meeting unless objection to lack of notice is raised before the business, of which proper notice was not given, is put to a vote.

Section 3.6 Quorum. A quorum is composed ten percent (10%) of the Members holding votes in the Association, provided that, unless twenty percent (20%) or more of the voting power is present in person or by proxy, the only matters that may be voted upon at an annual or regular meeting of Members are those matters that are described in the meeting notice.

Section 3.7 Voting. On all matters upon which the Members are entitled to vote, each Member shall be entitled to cast one (1) vote for each Lot in which he shall own of record a fee interest or an undivided fee interest. When more than one (1) Person owns a Lot, the vote for such Lot shall be exercise as they determine between themselves, but in no event shall more than one vote be cast with respect to any Lot. If only one co-owner attempts to cast the vote for a Member Lot, it shall be conclusively presumed that such co-owner is authorized on behalf of all co-owners to cast the vote for such Lot. In the event of disagreement among co-owners and two or more of them attempt to cast a vote, such Persons shall not be recognized and such votes shall not be counted.

No Member shall be eligible to vote, either in person or by proxy, or to be elected to the Board, if that Member is shown on the books or management accounts of the Association to be more than thirty (30) days delinquent in any payment due the Association or if the Member has had its voting rights suspended for the infraction of any provision of the Declaration, these Bylaws, or any rule of the Association. If the voting rights of a Member have been suspended, that Member shall

not be counted as an eligible vote for purposes of establishing a majority or a quorum or for purposes of amending these Bylaws or the Declaration.

Section 3.8 Adjournments. Any meeting of the Members may be adjourned by the holders of a majority of the votes represented at the meeting to reconvene at a specific time and place. It shall not be necessary to give any notice of the reconvened meeting, if the time and place of the reconvened meeting are announced at the meeting which was adjourned. At any such reconvened meeting, any business may be transacted which could have been transacted at the meeting which was adjourned.

Section 3.9 Proxy. Any Member entitled to vote may do so by written proxy duly executed by such Member setting forth the meeting at which the proxy is valid. Only Members and their spouses or co-habitants may hold proxies. To be valid, a proxy must be signed, dated, and filed with the Secretary prior to the opening of the meeting for which it is to be used. Proxies may be delivered to the Board by personal delivery, U.S. mail, or facsimile transmission to any Board member. Proxies may be revoked only by written notice delivered to the Association, except that the presence in person by the proxy giver at a meeting for which the proxy is given shall automatically invalidate the proxy for that meeting. A proxy holder may not appoint a substitute proxy holder unless expressly authorized to do so in the proxy.

Section 3.10 Consents. In the Board's discretion, any action that may be taken by the Association Members at any annual, regular, or special meeting may be taken without a meeting if the Board delivers a written consent form or written ballot to every Member entitled to vote on the matter.

(a) Ballot. A written ballot shall set forth each proposed action and provide an opportunity to vote for or against each proposed action. Approval by written ballot shall be valid only when the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action, and the number of approvals equals or exceeds the number of votes that would be required to approve the matter at a meeting at which the total number of votes cast was the same as the number of votes cast by ballot.

All solicitations for votes by written ballot shall: (1) indicate the number of responses needed to meet the quorum requirements; (2) state the percentage of approvals necessary to approve each matter other than election of directors; and (3) specify the time by which a ballot must be received by the corporation in order to be counted. A written ballot may not be revoked. The Association shall maintain such ballots in its file for at least three (3) years.

(b) Written Consent. Approval by written consent shall be valid only when the number of written consents received equals or exceeds the requisite majority of the voting power for such action. Executed written consents shall be included in the minutes or filed with the Association's records. If an action of the Members is approved by written consent hereunder, the Board shall issue written notice of such approval to all Members who did not sign written consents. Membership approval shall be effective ten (10) days after written notice is issued; provided, however, if the consent is to an amendment to the Declaration which must be recorded, the effective date shall be no earlier than the date of recording of such amendment.

Section 3.11 Order of Business. At all meetings of the Association, Roberts Rules of Order (latest edition) shall govern when not in conflict with the Declaration, these Bylaws or the Articles of Incorporation.

#### **Article IV. DIRECTORS**

Section 4.1 Number. The initial number of directors on the Board of Directors shall be at least three (3). From and after the election of the first Board of Directors to be elected by the Class A Members, the Board of Directors shall consist of five (5) directors who shall be Members or spouses or cohabitants of Members, provided, however, that no Member and his or her spouse or cohabitant or co-Owner may serve on the Board at the same time.

Section 4.2 Appointment and Election. During the Development Period, as provided in the Declaration, the Board of Directors shall be appointed by the Declarant and the Developer except to the extent that the Declarant or Developer relinquishes its right in a written instrument signed by Declarant and the Developer, and recorded in the Wake County Register of Deeds.

From and after the termination of the Development Period, as provided in the Declaration and the Articles of Incorporation of the Association, the members of the Board of Directors shall be elected by the Class A Members. At the first election of directors by the Class A Members, the two (2) directors receiving the most votes shall be elected for a term ending at the first annual meeting following their election and the remaining three (3) directors shall be elected for a term ending at the second annual meeting following their election. Thereafter, upon the expiration of the term of office of each Board member, a successor shall be elected to serve for a term of two (2) years. The Board members shall hold office until their respective successors shall have been elected by the Association.

Each Member entitled to vote shall be entitled to cast one (1) vote for each Lot owned by such member for each directorship to be filled on the Board of Directors. Cumulative voting shall not be permitted. The candidates receiving the most votes shall be elected. Voting for election of Board member shall be by secret written ballot (unless dispensed with by unanimous consent at such meeting at which such voting is conducted).

Section 4.3 Removal of Members of the Board of Directors. With the exception of those directors appointed by Declarant and Developer during the Development Period, at any valid

regular or special Association meeting, any one or more Board members elected by Class A Members may be removed with or without cause by the Members holding a majority of the votes in the Association and a successor may then and there be elected to fill the vacancy created. Moreover, any director who has had two (2) consecutive unexcused absences from regularly scheduled Board meetings or missed more than one-third of the meetings of the Board during their term, or who is more than sixty (60) days past due in the payment of any assessment may be removed by the vote of a majority of the other directors. Any director whose removal has been proposed shall be given at least ten (10) days notice of the calling of the meeting to consider his or her removal and the purpose thereof and shall be given an opportunity to be heard at the meeting.

Section 4.4 Vacancies. Vacancies in the Board caused by any reason, except the removal of a director by vote of the membership, shall be filled by a vote of the majority of the remaining directors, even though less than a quorum, at any Board meeting. The successor selected shall hold office for the remainder of the term of the director being replaced.

Section 4.5 Compensation. No fee or compensation shall be paid by the Association to directors for their services in said capacity unless such fee or compensation is approved by a majority of the votes of the Members cast at a duly convened meeting thereof, and in no event shall any director receive any compensation from the Association for serving as a director prior to the termination of the Class B membership. The directors shall, however, be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties upon Board approval of such expenses.

Section 4.6 Regular Meetings. During the Development Period, the Board of Directors shall hold meetings no less than once each quarter. Thereafter, the Board of Directors shall meet no less frequently than once every six months, and, in all events, within thirty (30) days after the election or appointment of new directors.

Section 4.7 Special Meetings. Special meetings of the Board of Directors may be called at any time by the President, or by any two directors, on three (3) days notice to each director, which notice shall specify the time and place of the meeting. Notice of any such meeting may be waived by an instrument in writing executed before or after the meeting. Attendance in person at any meeting shall constitute a waiver of notice thereof.

Section 4.8 Waiver of Notice. Any director at any time, in writing, may waive notice of any Board meeting, and such waiver shall be deemed equivalent to the giving of such notice. Attendance by a director at any Board meeting shall also constitute a waiver of notice by him or her of the time and place of such meeting. If all directors are present at any Board meeting, no notice shall be required and any business may be transacted at such meeting.

Section 4.9 Conduct of Meetings. The President shall preside over all Board meetings, and the Secretary shall keep a minute book recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. The presence of directors entitled to cast one-half of the votes of the Board shall constitute a quorum for the transaction of business. One or more directors who participate in a meeting by means of telephone or electronic communication shall be deemed present and in attendance for all purposes at such

meeting, provided all persons participating in the meeting can hear each other.

**Section 4.10 Open Meetings.** At the discretion of the Board, but subject to requirements of NCGS 47-3-108(b), Board meetings may be private or open to all Members, but Members other than directors may not participate in any discussion or deliberation unless expressly authorized by the Board. Notwithstanding the above, the Board may adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, contract negotiations and orders of business of a similar nature.

**Section 4.11 Action without a Meeting.** Any Board action required or permitted to be taken at any meeting may be taken without a meeting if a majority of the directors consent in writing to such action. The written consents must describe the action taken and be signed by no fewer than a majority of the directors. The written consents shall be filed with the minutes of the Board.

**Section 4.12 Duties and Powers.** Except as specifically provided otherwise in the North Carolina Nonprofit Corporation Act, the North Carolina Planned Community Act, the Declaration, the Articles of Incorporation of the Association or these Bylaws, all powers inherent in or expressly granted to the Association may be exercised by the Board of Directors, acting through the officers of the Association, without any further consent or action on the part of the Members. The Board of Directors shall also have the responsibility of discharging all of the duties imposed upon the Board of Directors under the terms and provisions of the aforesaid instruments. By way of explanation, but not limitation, the Board of Directors shall have the power to and shall be responsible for the following:

- (a) preparation and adoption of an annual budget, in which there shall be established the contribution of each class of Members to the Annual Expenses;
- (b) making assessments to defray the Annual Expenses, establishing the means and methods of collecting such assessments, and establishing the due dates and period of the payments of the annual assessment;
- (c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas as defined in the Declaration;
- (d) designating, hiring, and dismissing the personnel necessary for the operation of the Association and the maintenance, repair, and replacement of the Common Areas, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments and other fees or charges, depositing the proceeds thereof in a financial depository or institution which it shall approve, or otherwise investing the proceeds in accordance with any limitations set forth in N.C. Gen. Stat. §§ 47F-1-101, et seq., which apply notwithstanding the provision in the Declaration which limits the application of said act, and using the proceeds to administer the Association;

(f) making and amending rules and regulations and imposing sanctions for violation thereof, including reasonable monetary fines as provided herein;

(g) suspending the membership rights of any Member of the Association, including the right to vote and use the Common Areas and the facilities located thereon, during the period of time such Member shall be delinquent in the payment of any assessment, assessment installment, or any other amount or amounts as shall be due and payable to the Association, or shall fail to comply with or abide by any rule or regulation adopted by the Board of Directors in regard to the Common Areas;

(h) opening of bank or other financial accounts on behalf of the Association and designating the signatories required;

(i) making or contracting for the making of repairs, additions, and improvements to, or alterations of the Common Areas in accordance with the other provisions of the Declaration and these Bylaws, after damage or destruction by fire or other casualty;

(j) enforcing by legal means the provisions of the Declaration, these Bylaws, and the rules and regulations adopted by it, and bringing any proceedings which may be instituted on behalf of or against the Members concerning the Association;

(k) obtaining and carrying insurance against casualties and liabilities, as provided in the Act and the Declaration, and paying the premium cost thereof;

(l) paying the costs of all services rendered to the Association or its Members and not directly chargeable to specific Members;

(m) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred;

(n) contracting with any Person for the performance of various duties and functions. The Board shall have the power to enter into common management agreements with trusts or other' associations or corporations. Any and all functions of the Association shall be fully transferable by the Board, in whole or in part, to any other entity; and

(o) establishing an office and/or post office box as may be necessary for the transaction of the business of the Association.

Section 4.13 Management Agent. The Board may, and upon termination of the Development Period, shall, hire a professional management agent or agents, at a compensation established by the Board, to perform such duties and services as the Board of Directors shall authorize. The Board shall use reasonable efforts in any management contract to provide for termination of such contract with or without cause and without penalty, upon no more than thirty (30) days written notice, and for a term not in excess of one (1) year. The Board may delegate to one

of its members the authority to act on behalf of the Board on all matter relating to the duties of the managing agent which might arise between meetings of the Board.

Section 4.14 Borrowing. The Board of Directors shall have the power to borrow money for any legal purpose subject to the approval of two-thirds (2/3) of the votes cast by in person or proxy at a duly called meeting or by ballot.

Section 4.15 Committees. The Board shall have the authority to establish such committees as the Board may determine with such powers and duties that the Board shall authorize. The members of all committees shall be appointed by the Board of Directors and shall serve at the pleasure of the Board. Any committee member may be removed with or without cause at any time and with or without a successor being named.

Each committee shall make recommendations to the Board of Directors with respect to the matters within the jurisdiction of such committee. The Board of Directors shall consider the recommendations of the committees in managing the affairs of the Association. The committees shall have no authority to transact business on behalf of the Association or to bind the Association, which authority is vested exclusively in the Board of Directors.

Section 4.16 Enforcement Rights. In addition to such other rights as are granted in the Act, the Articles of Incorporation, the Declaration or these Bylaws, the Board of Directors shall have the power, pursuant to the procedures set forth in this Section, recover from any Owner the cost of repairing damage caused such Owner, the Owner's family, invitees, employees or agents to any Common Area or other property of the Association; to impose sanctions for violations by an Owner, a member of his family, or any occupant, tenant, employee, guest or invitee of the Owner, of the Declaration, these Bylaws, rules and regulations adopted by the Association, or the Restrictive Covenants applicable to the Properties (hereinafter individually and collectively referred to as the "**Rules**"), which sanctions may include, but are not limited to, reasonable monetary fines, not to exceed the greater of the costs actually incurred by the Association in abating such violation including, without limitation, attorneys' fees, or one hundred and no/100 dollars (\$100.00) per day for each day more than five days after the decision that the violation occurs, and which fines shall constitute a lien upon the Lot of the Owner, and suspension of the right to vote and the right to use any recreational amenities located in the Common Area. In addition, the Board may suspend any services provided by the Association to an Owner or the Owner's Lot if the Owner is delinquent in paying any assessment or other charges owed to the Association. The failure of the Board to enforce any of the Rules shall not be deemed a waiver of the right to do so thereafter.

(a) Notice. Except as provided in Section 4.16(c), before imposition of any sanction, the Board or its delegate shall give the Owner written notice describing: (i) the nature of the alleged violation or damage; (ii) the proposed sanction to be imposed; and (iii) the date, time and place of the hearing. Such notice may be hand delivered by any person or sent by certified mail, return receipt requested. Any notice hand delivered shall be deemed received when received by the Owner or by any person more than eighteen (18) years old who is present at the address of the Owner as shown on the records of the Association. Notice sent by certified mail shall be deemed received on the third (3<sup>rd</sup>) business day after same is deposited in the United States Mail. The Board shall include in its minutes evidence of the giving of such notice, including a copy of the notice and

a statement of the date and manner of delivery signed by the officer, director or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting, unless the appearance is made to protest the lack of notice.

(b) Hearing. The hearing shall be held by the Board of Directors in executive session or by a committee of not less than three (3) members (who may or may not be Directors of the Association) appointed by the Board of Directors for the purpose of hearing such appeals. The Owner shall be afforded a reasonable opportunity to be heard and to present evidence. A written statement of the results of the hearing and the sanctions, if any, imposed, shall be placed in the minutes of the Board of Directors and a copy of such statement shall be provided to the Owner in the same manner as the notice required by subsection (a) of this Section.

If the hearing was held before a subcommittee appointed by the Board, the Owner shall have the right to appeal the decision to the Board of Directors by giving a written notice of appeal to the President or Secretary of the Association within fifteen (15) days after receiving a copy of the written statement of the results of the hearing. If such notice of appeal is given, the Board shall schedule and notify the Owner of the date of the appeal hearing, which shall be not less than five (5) nor more than fifteen (15) days after notice of appeal is given, and which must be attended by not less than seventy-five percent (75%) of the members of the Board of Directors. The Owner shall be afforded a reasonable opportunity to be heard. The Board of Directors may, by majority vote of the Directors present at such appeal hearing, affirm, modify or vacate the decision of the subcommittee. A written statement of the results of the appeal hearing and the sanctions, if any, imposed, shall be placed in the minutes of the Board of Directors and a copy of same shall be provided to the Owner in the same manner as the notice required by subsection (a) of this Section.

(c) Additional Enforcement Rights. Notwithstanding anything to the contrary in this Article, the Board of Directors may elect to enforce any provision of the Rules, without the necessity of compliance with the notice and hearing procedures set forth herein, by self-help methods (specifically including, but not limited to, the towing of Owner and tenant vehicles parked in violation of parking rules, the maintenance of lawns or landscaping an Owner fails to maintain in accordance with applicable maintenance obligations, or the removal of structures erected in violation of rules related to architectural control or approval) or by action at law or in equity to enjoin any violation or to recover monetary damages, or both. In any such action, to the maximum extent permitted by law, the Association shall be entitled to recover all costs of such action, including reasonable attorney's fees incurred. Any entry onto any Lot for purposes of exercising this power of self-help shall not be deemed as trespass.

## **Article V.    OFFICERS**

Section 5.1    General Provisions. The officers of the Association shall consist of a President, a Vice President, a Secretary, and a Treasurer. In addition, the Association shall have such other officers as the Board of Directors shall deem to be desirable in connection with the administration of the affairs of the Association. Any two or more offices may be held by the same persons, except the offices of President and Secretary.

Section 5.2 Appointment. All of the officers of the Association shall be appointed by, and shall serve at the pleasure of, a majority of the members of the Board of Directors.

Section 5.3 President. The President shall be the chief executive officer of the Association, and shall preside at all meetings of the Members and of the Board of Directors. The President shall manage, supervise and control all of the business and affairs of the Association, and shall have all of the powers and duties which are incident to the office of the president of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.4 Vice President. The Vice President shall perform the duties of the President whenever the President shall be absent or unable to perform such duties. If neither the President nor the Vice President shall be able to perform such duties, the Board of Directors shall appoint one of their members to act in the place of the President on an interim basis. The Vice President shall also perform such other duties as the President may delegate to him from time to time.

Section 5.5 Secretary. The Secretary (a) shall attend all meetings of the Members and of the Board of Directors and shall keep the minutes thereof, (b) shall be responsible for the preparation and giving of all notices which are required to be given by the Declaration and these Bylaws, (c) shall perform the responsibilities of the Secretary under Section 4.2 of these Bylaws, (d) shall be the custodian of the books and records of the Association, (e) shall keep a register of the addresses of each Member of the Association, and (f) shall perform such other duties as are incident to the office of the secretary of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.6 Treasurer. The Treasurer shall be charged with the management of the financial affairs of the Association, and shall keep full and accurate financial records and books of account showing all receipts and disbursements and of the Association, and shall prepare all required financial data. The Treasurer shall also perform all of the duties which are incident to the office of the treasurer of a corporation organized under the North Carolina Nonprofit Corporation Act.

Section 5.7 Compensation of Officers. The officers of the Association shall be entitled to the payment of such compensation as shall be approved by two-thirds (2/3) of the total members of the Board of Directors; provided, however, that prior to the termination of the Class B membership, in no event shall any officer receive any compensation from the Association for serving in such capacity. The officers shall, however, be entitled to reimbursement for reasonable expenses incurred by them in the performance of their duties upon Board approval of such expenses.

## **Article VI. MISCELLANEOUS**

Section 6.1 Fiscal Year. The fiscal year of the Association shall be selected by the Board. Unless otherwise selected, the fiscal year shall be the calendar year.

Section 6.2 Certain Notices. Any Member who shall sell or lease any Lot in which he

has a fee or undivided fee interest shall promptly give the Secretary a written notice of such sale or lease, which notice shall also set forth the name and address of such purchaser or lessee. The address so furnished for such purchaser or lessee shall be the address to which the Secretary shall send any notices to be sent to such purchaser or lessee, until such purchaser or lessee shall furnish the Secretary with another address for such purpose.

#### **Article VII. AMENDMENTS**

These Bylaws may be amended only in accordance with the following procedure: the Board of Directors shall first adopt a resolution proposing the amendment and recommending its adoption by the Members. Such proposed amendment shall then be presented to the Members at a meeting thereof duly called and held for the purpose of considering such proposed amendment. If such proposed amendment is approved by at least two-thirds (2/3) of the votes cast at such meeting and the approval of Developer during the Development Period, such amendment shall become effective upon recording with the Wake County Register of Deeds.

#### **Article VIII. INDEMNIFICATION**

Each person who is or was a director or officer of the Association, shall be indemnified by the Association against those expenses (including attorneys' fees), judgments, fines and amounts paid in settlement which are allowed to be paid or reimbursed by the Association under the laws of the State of North Carolina and which are actually and reasonably incurred in connection with any action, suit or proceeding, pending or threatened, whether civil, criminal, administrative or investigative, in which such person may be involved by reason of his being or having been a director or officer of the Association. Such indemnification shall be made only in accordance with the laws of the State of North Carolina and subject to the conditions prescribed therein.

In any instance where the laws of the State of North Carolina permit indemnification to be provided to persons who are or have been an officer or director of the Association only on a determination that certain specified standards of conduct have been met, upon application for indemnification by any such person the Association shall promptly cause such determination to be made (i) by the Board of Directors by majority vote of a quorum consisting of directors not at the time parties to the proceeding; (ii) if a quorum cannot be obtained, by majority vote of a committee duly designated by the Board of Directors (in which designation directors who are parties may participate), consisting solely of two or more directors not at the time parties to the proceeding; (iii) by special legal counsel selected by the Board of Directors or its committee in the manner prescribed in (i) or (ii), or if a quorum of the Board of Directors cannot be obtained under (i), and a committee cannot be designated under (ii), selected by majority vote of the full Board of Directors (in which selection directors who are parties may participate); or (iv) by the Members, but Members who are also directors who are at the time parties to the proceeding may not vote on the determination.

As a condition to any such right of indemnification, the Association may require that it be permitted to participate in the defense of any such action or proceeding through legal counsel designated by the Association and at the expense of the Association.

The Association may purchase and maintain insurance on behalf of any such persons whether or not the Association would have the power to indemnify such officers and directors against any liability under the laws of the State of North Carolina. If any expenses or other amounts are paid by way of indemnification, other than by court order, action by the Members or by an insurance carrier, the Association shall provide notice of such payment to the Members in accordance with the provisions of the laws of the State of North Carolina.